Nos. 280, 314 and 966
October Term, 1941

IN THE

SUPREME COURT OF THE UNITED STATES

ROSCO JONES, *Petitioner,*

v.

CITY OF OPELIKA.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA.

LOIS BOWDEN AND ZADA SANDERS, *Petitioners,*

v.

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CHARLES JOBIN, *Appellant,*

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THE STATE OF ARIZONA.

APPEAL FROM THE SUPREME COURT OF ARIZONA.

ON REARGUMENT.

BRIEF ON BEHALF OF THE GENERAL CONFERENCE OF SEVENTH-DAY ADVENTISTS AS AMICUS CURIAE.

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CITATIONS.

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The General Conference of Seventh-Day Adventists submits this brief as amicus curiae in pursuit of its established

policy to guard against infringement of the free exercise of any religion.[1] This Denomination is well recognized throughout our country, and indeed abroad, for its religious zeal, its earnest faith, its charitable and educational works and its good citizenship. Because of the direct and adverse effect of ordinances of the type here questioned upon the exercise and practice of a tenet of its religious doctrine which is dominant and essential to the continued vigor and vitality of the Denomination itself, this brief is in support of the contentions of the petitioners.

Statement.

The language of the questioned ordinances and the pertinent facts are adequately stated in the opinion of this Court. *Jones* v. *Opelika*, 316 U. S. 584. For the purpose of this brief it is accepted that the questioned ordinances of the cities of Opelika, Fort Smith and Casa Grande there quoted apply only to the selling and not the mere free distribution of religious books and pamphlets and that this Court, contrary to the contention of the petitioners, properly views the transactions of the petitioners as involving sales.[2]

The far-reaching effect of decision in the instant cases, particularly its impact on the freedom of worship of the members of the General Conference of Seventh-Day Adventists will be apparent from a brief consideration of its tenets based upon a literal reading of the Bible and of its missionary evangelism including the vending of denominational literature.

There have been filed with the brief amicus on petition for rehearing, as numbered exhibits, the Denomination's

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[1] See *Pierce* v. *Society of Sisters*, 268 U. S. 510, 529.

[2] Petitioners in Nos. 280 and 314 and appellants in No. 966 are herein collectively referred to as "petitioners".

Annual Year Book for 1942 (Exhibit I), the most recent Statistical Reports of the Denomination and its General Conference (Exhibits II, III, and IV), the Financial Statement of the Seventh-Day Adventist Conferences (Exhibit V), the Colporteurs' Summary for North America for 1940-1941 (Exhibit VI), and a recent historical and anniversary number of one of the magazines of the Denomination (Exhibit VII). With these as a basis, the origin of the Denomination and its pertinent tenets, including the religious nature and duty of the vending of denominational literature may be briefly sketched.

A. History and Beliefs of the Seventh-Day Adventist Denomination.

1. Origin and Growth.—The roots of the Seventh-Day Adventist Denomination are to be found in the time and place of the first settlements of New England, with its immediate organization in the religious revival at the beginning of the nineteenth century.[3]

a. Seventh-Day Baptists.—Among the dissentient groups who first came to America were the Baptists, including those who observed the "Bible Sabbath" which fell on the Saturday of the Puritans. The first Sabbathkeeper came to America in 1664, forty-four years after the landing of the Pilgrims. They suffered the religious persecution of the time in New England and were offered haven in Rhode Island by Roger Williams who championed their "most

[3] Loughborough, Rise and Progress of Seventh-Day Adventists (Battle Creek, Michigan, 1892); Loughborough, The Great Second Movement (South Bend, Ind., 1905); Andrews, Story of the Advent Message (Peekskill, N. Y., 1927); Olsen, A History of the Origin and Progress of Seventh-Day Adventists (Washington, D. C., 3d ed. 1932); Howell, The Great Advent Movement (Washington, D. C., 1935).

[4] Longaere, Roger Williams—His Life, Work, and Ideals (Washington, D. C., 1939), 74-75, 87-88.

Scriptural" cause.[4] In a very real sense there was an identity between their birth here and the birth of religious liberty.[5]

b. The Adventists.—Early in the Nineteenth Century, the minds of religious men became particularly concerned with the prophecies of Divine revelation. Many of them, including men of prominence in both the Old World and the New, became enthusiastic converts to the view that the prophetic second coming of the Lord was at hand.[6]

c. The Seventh-Day Adventists.—The faith of the Seventh-Day Adventists Denomination is, in essence, a uniting of the major beliefs of both the Adventists and the Seventh-Day Baptists. Adventists became convinced that the seventh day was the true Bible Sabbath and must be

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[5] The Seventh-Day Baptists accepted Williams' invitation to Rhode Island, and one of them became governor. *Idem.* Williams was the first pastor of the first Baptist church of Providence, the Baptists carried their message of religious freedom to Anglican Virginia, and there Jefferson and Madison became their attorneys in their struggle for religious freedom. *Id.*, 100-101. Rhode Island refused to ratify the Constitution until assured, with the aid of Madison and Jefferson, that the declaration of tolerance in the Bill of Rights would be adopted. *Id.*, 183 *et seq.* As a minority group, the Seventh-Day Adventists, who succeeded the Seventh-Day Baptists, have always stressed the concept of separation of church and state, with complete liberty of conscience in spiritual matters.

[6] The original leaders of the Adventist movement pointed to the prophecy in the book of Daniel, "And he said unto me, Unto two thousand and three hundred days; then shall the sanctuary be cleansed." Daniel 8:14. These prophetic days they took to be literal years, beginning as they thought from the ninth chapter of Daniel at the going forth to restore and build Jerusalem in 457 B. C. The period would, therefore, end in the autumn of 1844 A. D. The uneventful passing of the year, of course, caused a decline in the number of Adventists and a revision of their beliefs. Accordingly, many Adventists adopted the view that the sanctuary mentioned by Daniel was not this earth, but the temple of God in Heaven. The cleansing, therefore, of the sanctuary began with the entrance of Christ as the high priest upon the judgment phase of his ministry which began in 1844. This is today the belief of the Seventh-Day Adventist Denomination. 1942 Year Book of the Seventh-Day Adventist Denomination, p. 5.

observed according to the Commandments, and the first Sabbath-keeping Adventist Church was formed at Washington, New Hampshire, in 1844.

d. Present Organization.—In 1861 the name "Seventh-Day Adventists" was formally adopted by the Denomination at Battle Creek, Michigan. In that year the first organizational plans were drawn for the State of Michigan. Two years later the first General Conference session was held and a world wide organization was planned.

The Organization as it exists today is as follows:

1. The Church.—A united body of individual believers holding the same faith and doctrines in common.

2. The Local Conference.—Or local mission field, which is a united body of churches in a state, province, or local territory.

3. The Union Conference.—Or union mission field, which is a united body of conferences or mission fields within a larger territory.

4. The Division.—A division or section of the General Conference, embracing local or union conferences or mission fields in large sections of the world field.

5. The General Conference.—The general body embracing the church in all parts of the world.

The organization of the Seventh-Day Adventist Church is representative in form. Every church member votes for church officers and for delegates to the sessions of the local conferences, with authority to elect conference officers and transact other conference business. This same plan is in turn followed by the local conferences in sending delegates to the union conference sessions, and by the union conferences and divisions in sending delegates to the General Conference session.

The headquarters of the General Conference of Seventh-Day Adventists, originally located at Battle Creek, Michigan, was moved to Takoma Park, Washington, D. C., in 1903. In that same year the General Conference Corporation of Seventh-Day Adventists was incorporated under the laws of the District of Columbia, and it is this body that holds title to most of the Denomination's real property.

Of its more than half million followers throughout the world,[7] the Denomination numbers over one hundred and eighty thousand members within the United States.[8]

2. Missionary Evangelism.—The word of Jesus in Mark 1:17, "Come ye after me, and I will make you fishers of men," motivates the entire field of activity in which the Denomination engages. Though the activities assume various forms, the teaching of the Gospel is the mission.

a. *Health and Medical Evangelism.*—The teaching of the Bible found in 3 John 2, "Beloved, I wish above all things that thou mayest prosper and be in health even as thy soul prospereth," is the basis for the vast medical program of the Denomination. Medical treatment as taught by the Bible is given practical application among the members of the Denomination and patients at its various institutions. Abstention from intoxicating liquors, tobacco, and narcotics is taught.[9] In addition, vegetarianism in accordance with the word of the Bible is followed by the Denomination's health institutions.[10]

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[7] 1942 Year Book of the Seventh-Day Adventist Denomination, p. 2, 288.

[8] Statistical Report of the Seventh-Day Adventist Conferences in the United States and Canada, First Quarter, 1942, p. 4.

[9] 1 Cor. 3:16, 17; 9:25; 10:31; 1 Tim. 2:9, 10; 1 John 2:6.

[10] Gen. 1:29, "And God said, Behold, I have given you every herb bearing seed which is upon the face of all the earth, And every tree in which is the fruit of a tree yielding seed; to you it shall be for meat."

The armed services of the United States purchase for general use some of the health foods produced by the Pacific Union Conference of Seventh-Day Adventists.

In the United States fourteen sanitariums are operated by the Denomination, and these are open to all patients regardless of the religious faith they espouse.[11] Such well known organizations as the Battle Creek (Mich.) Sanitarium, the Glen Dale (Calif.) Sanitarium, and the Washington (D. C.) Sanitarium are among the institutions founded by the Denomination. Throughout the world a total of ninety sanitariums and sixty-eight treatment rooms and dispensaries are operated.[12]

b. *Educational Institutions.*—The development of the faith through education has been a prominent part of the Denomination's work. Throughout the world the Seventh-Day Adventists maintain two thousand six hundred and twenty-six elementary schools, and two hundred and fifty-one academies and colleges, with a total of over one hundred and ten thousand students.[13]

c. *Publishing Houses.*—The printed word has always been the most effective medium for spreading the Gospel and, since the early days of the Denomination, has been recognized as of fundamental importance in the evangelical mission.[14] Today 83 publishing houses stretch around the world and issue publications in over 200 languages.[15] All

[11] Statistical Report of Seventh-Day Adventist Conferences, 1940, p. 20.

[12] 1942 Year Book of Seventh-Day Adventist Denomination, p. 289.

[13] *Id.*, p. 291.

[14] Its amazing effectiveness is demonstrated by an incident occurring early in the history of the Denomination. Elder James White, a pioneer of the church, sent, in 1876, a religious volume and some tracts accompanied by a letter to Pitcairn Island. Though nothing further was done, it was learned a decade later that the entire population of the island had decided to change their day of worship from the first day of the week to the seventh and keep the Lord's Sabbath. Howell, The Great Advent Movement, p. 175.

[15] The literature is issued in 202 languages and is prepared in the form of 329 periodicals, 2,338 bound books, 1,355 pamphlets, 5,234 tracts—a total of 9,256 separate publications. 1942 Year Book of the Seventh-Day Adventist Denomination, p. 290; Statistical Report of the Seventh-Day Adventist Conferences in the United States and Canada, First Quarter, 1942, p. 7.

publishing houses are non-profit organizations. Each is organized as a benevolent, charitable and philanthropic institution, no dividends may be paid to any of its members, and none of its real or personal property is ever expended except to carry into effect the legitimate aims and ends of its being.[16] By both the printed and spoken word, the Gospel is carried into 412 countries in 824 languages.[17]

B. The Colporteur Evangelist System.

An essential part of the Denomination's religious creed and activity, upon which they depend for their very existence, is the colporteur evangelist system.

The materials printed by the Denomination are disseminated by trained "colporteurs" [18] The colportage method of distribution of evangelical literature, as used by the Seventh-Day Adventist Denomination, is as old as the history of printing itself—the sale by itinerant church work-

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[16] A typical charter provision is that of Article 3 of the Articles of Incorporation of the Review and Herald Publishing Association, Takoma Park, Washington, D. C., which provides: "The general purpose and object for which this corporation is formed is to further, by all proper and legitimate agencies and means, the dissemination of religious and moral instruction; more particularly its purposes and objects are to secure and hold copyrights and plates of tracts, pamphlets, books, and periodicals; to publish, print, and circulate literature in all languages and countries; to receive gifts, legacies, and donations from any source whatever; to make gifts and appropriations from any or all of its resources from time to time; and to exercise all such power and authority as may be necessary to carry out the objects and purposes above specified. But the purpose and essence of this corporation, being purely benevolent, charitable, and philanthropic, it is hereby expressly declared that this is a corporation not for gain, that no dividends shall ever be declared or paid to any of its members, and that none of its property, real or personal, shall ever be used or expended except in carrying into effect the legitimate ends and aims of its being."

[17] 1942 Year Book, p. 287. Government departments and services draw heavily upon the linguists of the Denomination's missionary work, at the moment particularly those familiar with the Japanese tongue.

[18] "• • • One who distributes or sells religious tracts and books." Webster's New International Dictionary, Second Edition, p. 530.

ers of religious tracts and books throughout the world.[19] There is no alternative system by which such large quantities of literature can be distributed at so low a cost. The colporteur supplies the personal touch necessary to win souls. In 1941 over 1000 Seventh-Day Adventist colporteurs carried the Gospel into thousands of homes, with sales of over a million dollars. By their work many thousands are won to the message of God.

Scrupulous care is exercised in the selection and training of Seventh-Day Adventist colporteurs. They are "Gospel workers" whose qualifications are equal in standing with those who preach the Gospel.[20] In addition to education and other requirements they must, of course, be consecrated to the zealous desire to bring the Gospel of Jesus Christ to the people. Applicants who have been accepted to enter the literature ministry as colporteur evangelists must attend a training school, and every conference in North America holds these special schools once a year. Frequently workers are brought back from the field for further training.

In the field each worker is under the supervision of a field missionary secretary to whom a report is made weekly. Each receives recompense on a commission basis or by guaranteed payments from the Denomination. After fifteen years of continuous service, each colporteur is entitled to the same pension as retired ministers. His calling is missionary work of the highest order. The literature sold by the colporteur consists, in the main, of religious books. A list of those books generally carried by the colporteur is as follows:

Adult Books:

1. The Holy Bible—King James version.
2. The Great Controversy—A History of the Christian Faith and Beliefs through the Ages.

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[19] Palmer, The Printing-Press and the Gospel (Washington, D. C., 1912).
[20] White, The Colporteur Evangelist (Mountain View, Calif., 1930).

3. Patriarchs and Prophets—Lives of the Holy Men of Old.

4. The Desire of Ages—The Life of Christ.

5. Bible Readings—Questions and Answers from the Bible.

6. The Home Physician—Prevention and Cure of Disease.

7. Our Times and Their Meaning—The Bible in Everyday Life.

Children's Books:

1. The Children's Friend—The Story of Jesus.

2. Stories of the Kings—Lives of the Kings from David to Christ.

3. Easy Steps in the Bible Story—From the Creation to Joseph.

4. Men of Might—Stories from Moses to Samuel.

5. Bedtime Stories.

From the time of the adoption of the First and Fourteenth Amendments until a year ago the heavy hand of government never fell upon this Denomination. They grew, they prospered, they obeyed their consciences, they worshipped their God, they spread the Gospel, they wrought their good works and gained the respect of all right thinking people. Then there broke out in America a rash of ill-considered municipal ordinances, designed, it would seem, to break down another and quite different religious group—those who have brought the pending cases. But from the by-product of this local intolerance the Seventh-Day Adventist faith suffered as well.

Thus, the judgment of this Court struck a heavy blow at the Denomination. Moreover, since the date of the opinion of this Court, June 8, 1942, similar ordinances, rising like a flood, threaten to overwhelm this old and honorable religious faith, and, if permitted to stand, will disrupt its organization, curtail its activities, diminish its revenue, impair its usefulness and, as we contend, deny to its membership their constitutional right to religious freedom.

ARGUMENT.

The majority opinion sustains the questioned ordinances on the theory that the fee is "a non-discriminatory license fee, presumably appropriate in amount". And again—"Nothing more is asked from one group than from another which uses similar methods of propagation. We see nothing in the collection of a non-discriminatory license fee, uncontested in amount, from those selling books or papers, which abridges the freedoms of worship, speech and press."

But this avoids the crucial question. The feature called "non-discriminatory" possesses no merit and is, indeed, irrelevant. A horizontal line may not be drawn through the activities of the American people, including those protected by constitutional provisions and those not so protected, imposing burdens, and the proceeding then justified upon the theory that everyone is treated alike. The constitution clearly indicates that the treatment must *not* be alike—but different. What may be done in the one case and what must be avoided in the other follows from a mere reading of the Constitution. The First and Fourteenth Amendments have placed free religion, free speech and free press in a preferred position. They may not be burdened or hampered or impaired. They may not be dispossessed from their high estate. They are sacred—always—against destruction or seemingly minor invasion.

Likewise to argue that the so-called fees are "presumably reasonable" is to fly in the face of the record and to do violence to common sense. The Constitution does not contemplate any fee or any tax or any act that interferes with the free exercise of religion. But where, as in the instant cases, the substantial taxes are either for revenue or for the purpose of striking down a religious faith, no sophistry can conceal their unconstitutionality.

I.

The free exercise of religion is unconstitutionally invaded by the taxes here involved because they were plainly enacted with prohibitory purpose under the mere guise of taxes.

It is, of course, established that the fundamental rights of free speech, press and religion expressly recognized by the First Amendment are also protected by the Fourteenth Amendment against destruction or invasion by the States. *Near* v. *Minnesota*, 283 U. S. 697, 707; *Lovell* v. *Griffin*, 303 U. S. 444, 450; *Hague* v. *C. I. O.*, 307 U. S. 496, 503; *Schneider* v. *State*, 308 U. S. 147, 160. "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation." *Schneider* v. *State*, supra, p. 161. "It is imperative that, when the effective exercise of these rights is claimed to be abridged, the courts should 'weigh the circumstances' and 'appraise the substantiality of the reasons advanced' in support of the challenged regulations". *Thornhill* v. *Alabama*, 310 U. S. 88, 96. No reason appears why this Court should blind itself to the realities of these cases and refuse to recognize the prohibitory objective manifestly underlying the licensing ordinances. The suppressive effect on distribution of the transient sort here involved is apparent on the face of the ordinances. Obviously the requirement of the Opelika ordinance of a $5.00 exaction from transient distributors, the Fort Smith exaction of $2.50 per day and the Casa Grande requirement of $25 per quarter must in many cases either deter or altogether prevent the distribution of pamphlets, leaflets and books by persons situated as are the petitioners.

Statistics accumulated by the General Conference of Seventh-Day Adventists make even more plain that the ordinances before the Court are not isolated instances but

are merely manifestations of a wave of so-called licensing legislation which cannot reasonably be regarded as other than prohibitive in purpose and effect. Particularly in the small and rural areas, where colporteurs can ordinarily be most effective and in fact do most of their work, these exactions would in many, if not most, cases exceed the gross amount of sales of religious literature.

The State of Arizona may be taken as illustrative. Normally that State should be a fruitful ground. Instead, however, over two-thirds of the cities and towns of Arizona enforce ordinances requiring licenses for colporteurs. A tabulation of some of these cities and the amounts exacted is as follows:

CITY	POPULATION	LICENSE
Buckeye	1,077	$10 per quarter
Casa Grande	1,351	$25 per quarter
Douglas	8,623	$25 per annum
Duncan	1,050	$10 per annum
Flagstaff	5,080	$5 per day
Nogales	5,135	$50 per day
Phoenix	65,414	$25 per quarter
Prescott	6,018	$10 per month
Safford	1,706	$10 per annum
Tucson	36,818	$25 per quarter
Wickenburg	734	$200 per annum
Willcox	806	$2 per day
Winslow	4,577	$5 per day
Yuma	5,325	$5 per day

In other States typical municipal license exactions are as follows:

STATE	CITY	POPULATION	LICENSE
California	Berkeley	85,547	$60 per annum
	El Cerrito	6,137	$10 per quarter
	Roseville	6,653	$5 per month
	San Diego	203,341	$2.50 per month
	Woodland	6,637	$50 per quarter
Florida	Lake Worth	7,408	$25 per annum
Georgia	Albany	19,055	$250 per annum
	Griffin	13,223	$75 per annum
Iowa	Cedar Rapids	62,120	$75 per annum
	Council Bluffs	41,439	$10 per day
	Davenport	66,039	$3 per day
	Dubuque	43,892	$10 per day
	Fort Dodge	22,904	$35 per day
	Keokuk	15,076	$5 per day
	Mason City	27,080	$3 per day
	Sioux City	82,364	$25 per day

STATE	CITY	POPULATION	LICENSE
Kentucky	Corbin	7,893	$10 per week
	Somerset	6,154	$7.50 per day
New York	Ithaca	19,730	$5 per month
	Massena	11,328	$50 per annum
Penn.	Charleroi	10,784	$5 per day
	Duquesne	20,693	$2 per day
	Erie	116,955	$75 per annum
	Grove City	6,296	$25 per annum
	New Brighton	9,630	$5 per day
South Carolina	Charleston	71,275	$10 per week
Washington	Tacoma	109,408	$5 per month
	Seattle	368,302	$5 per month
Wisconsin	Marshfield	10,359	$10 per day

The foregoing list is by no means complete. It represents only those specimens recently sent in to Denomination Headquarters by the Gospel workers.

The crushing individual and aggregate effect of these impositions is apparent. Colporteurs remain in one vicinity for only a brief time, depending on the size of the community. At best their sales of Gospel literature are limited, and they earn for themselves or are paid by the Denomination no more than a modest missionary salary or commission.[21]

The principal cases now under consideration by the Court are not isolated instances of the use of the licensing authority to shut the door upon colporteur evangelists and the spreading of the Gospel. The trend is rather toward the universal adoption of prohibitive license taxes. In addition

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[21] The published Colporteurs' Summary—North America, 1940-1941 (Exhibit VI herein), shows a total of 1018 colporteurs operating and delivering for the month of December, 1941, $97,997.19 worth of gospel literature, and for the whole year of 1941 a total of $790,610.36, or an average of $776.63 per person for one year, or $65.00 per month. Many of these, however, are students and temporary workers. Since the colporteurs receive half of their collections, those who give their entire time to the work earn an average of $17.60 per week, from which they must pay traveling and living expenses for themselves and their families not only at the time that the orders are taken but also at a later date when the deliveries are made. From the contrast between the amount of municipal license fees and the income of the colporteurs, it is obvious that the payment of such license exactions is prohibitory.

to new ordinances which have been adopted, and will unquestionably continue to spring into being as a result of the decision, existing ordinances, heretofore not enforced against colporteurs because of the supposed constitutional guaranty, will be put into vigorous effect. It is not too much to say that the cumulative result may be the ultimate destruction of the Denomination, and it must necessarily curb drastically the missionary method it has developed in the United States without official hindrance for a century.

This Court, with penetrating examination of the substance and application of the particular statute, has on numerous occasions disregarded the mere designation of an exaction as a tax. Where, as here, there is a gross disproportion between the exaction and the amount of income that may reasonably be anticipated from the activity taxed, indicating its practical inhibition and the impossibility of thereby raising revenue, the exacting enactment is properly to be regarded as a prohibition rather than a revenue measure. *Child Labor Tax Case*, 259 U. S. 20, 36-37; *Trusler* v. *Crooks*, 269 U. S. 475, 482; *United States* v. *Constantine*, 296 U. S. 287, 294. Resort to the taxing power to effectuate an end which is not legitimate, not within the constitutional authority but expressly withdrawn therefrom, cannot be approved. Cf. *United States* v. *Butler*, 297 U. S. 1, 69.

It is submitted that the absolute personal rights of free speech and religious freedom here involved are no less important and are to be guarded with no less vigilance than was the line of demarcation between federal and state powers in the cases above cited.

II.

Exaction of a tax in a fixed amount as a condition to the non-commercial dissemination of religious books or pamphlets, violates the religious liberty guaranteed by the Constitution.

The records in these cases show that petitioners were prosecuted for selling pamphlets which set forth the religious beliefs of their sect and that the monies derived from such sales were neither sufficient in amount, nor ultimately devoted to such purpose as to justify treating the activities of petitioners or of those who published the matter distributed by them as involving anything other than religious objectives. The funds collected are used for the propagation of the religious beliefs of petitioners. The taxes in question exact a fixed amount unrelated to the question of the defendant's activities or the amount of the receipts, gross or net, derived from the sale of their pamphlets. The impairment of religious freedom and the right of free speech is plain.

Even if it be deemed that this tax is not a mere disguised attempt by indirection to suppress the exercise of religious activity which could not directly be impaired by exercise of the police power, and even though it be conceded that threatened destruction of a particular occupation is ordinarily no basis for restraint of otherwise valid taxation (*Magnano Co. v. Hamilton*, 292 U. S. 40, 44-45), it is nevertheless clear that the taxes here involved must be held invalid. The first ten Amendments were contemporaneous with the Constitution and, with respect to their provisions, as in interpretation of the original, account must be taken of "The necessities which gave birth to the Constitution, the controversies which preceded its formation and the conflicts of opinion which were settled by its adoption. * * *"

Knowlton v. *Moore*, 178 U. S. 41, 95. Since, as is amply shown by the authorities cited in the respective dissenting opinions of the Chief Justice and of Mr. Justice Murphy (316 U. S. 610, 616), the asserted impairment of the guaranteed right is not only direct but is occasioned by taxes essentially identical in their suppression of circulation with the stamp taxes which inspired the provisions of the First and the protection of the Fourteenth Amendment, clearly those Amendments must be regarded as mere words if they do not protect against this bold encroachment.

The same conclusion follows from reference to the practical operation of the ordinance in question. When regard is had to the uncertainty of the amount to be obtained from the exercise of the licensed "privilege", it is plain that with respect to persons generally who might otherwise engage as transient agents for, or dealers in, books of any description, the prerequisite payment in advance must discourage some and be a deterrent element as to all. As to the

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[22] It is not here contended that the dissemination of intelligence, religious or otherwise, is free of all restraint. In its name the citizen may do nothing directly harmful to the public welfare. *Barnette* v. *West Virginia State Board of Ed.*, 47 F. Supp. 251, 253. It seems clear that while the right of religious liberty may not be curtailed, the State under the police power may employ certain regulations in the public interest to prevent its abuse. *Reynolds* v. *United States*, 98 U. S. 145, 163; *Davis* v. *Beason*, 133 U. S. 333, 342; *Schneider* v. *State*, 308 U. S. 147, 165; *Cantwell* v. *Connecticut*, 310 U. S. 296, 308; *Cox* v. *New Hampshire*, 312 U. S. 569, 574; *Shapiro* v. *Lyle*, 30 F. (2d) 971.

And since there is no contention that the impositions here involved are "fees" there is no need to argue that a reasonable fee to cover the actual expense of regulatory licensing to prevent frauds might not properly be exacted. Neither is it necessary to argue here the invalidity of a license tax measure by a percentage of the gross receipts derived from sales of religious books or pamphlets and used exclusively for religious purposes. In *Giragi* v. *Moore*, 64 P. 2d 819 (Ariz.) app. dism. 301 U. S. 670, the Court speaking of the gross receipts business privilege tax said (p. 822): "• • • all who share the protection given by the government should also share the expense of that protection in proportion to their ability regardless of the business they are engaged in, *if it is for profit.*" (Emphasis supplied).

petitioners here, it seems plain that the absence of a countervailing possibility of profit must inevitably tend in a much greater degree to discourage and suppress their activities in exercise of their religious beliefs.

Furthermore, as to ordinary interstate commerce, relying on a mere implied jurisdictional immunity this Court has long held that similar fixed-sum license taxes, even though non-discriminatory, are nevertheless void as to those who solicit interstate purchases because in violation of the commerce clause. *Robbins* v. *Shelby Taxing District*, 120 U. S. 489, 497; *Brennan* v. *Titusville*, 153 U. S. 289; *Real Silk Mills* v. *Portland*, 268 U. S. 325, 335. The religious of all sects, then, will feel that there is more than mere anomaly—rather fundamental error—in a course of reasoning which, under the commerce clause, holds sacrosanct from license taxes the vendors of womens' hosiery, *Real Silk Mills* v. *Portland*, 268 U. S. 225, 335, and at the same time impairs religious liberty by holding identical taxes to be properly laid on the non-commercial distributors of religious books and pamphlets.

The right of religious liberty, with that of free speech, is guaranteed not only against destruction but is protected as well against abridgment or curtailment. *DeJonge* v. *Oregon*, 299 U. S. 353, 365. Therefore the protection ordained by the founding fathers would plainly not be satisfied even if it be assumed that with respect to religious liberty this Court could by continuous supervision adequately guard against consummation of the rule "That the power to tax involves the power to destroy." Cf. concurring opinion of Mr. Justice Frankfurter in *Graves* v. *New York ex rel. O'Keefe*, 306 U. S. 466, 439-490.

Once let the activities of petitioners be recognized as subject even to non-discriminatory license taxes and they will be embarked on the chartless sea of reasonableness of classi-

fication. *Caskey Baking Co.* v. *Virginia*, 313 U. S. 117, 121. With respect to the fundamental rights here involved, it is unnecessary in this Court to enlarge upon the possibilities of prejudice to dissemination of religious thought by means of discriminatory though constitutional classification in tax ordinances or to do more than thus suggest the potential burdens upon, and dangers to, these fundamental rights which might thus arise. Cf. *Thornhill* v. *Alabama*, 310 U. S. 88, 97.

Indeed, recently and in widely separated localities, to the detriment of members of Jehovah's witnesses and to the benefit of Adventist colporteurs, there has been administrative discrimination in the enforcement of similar license taxes such as was found in *McConkey* v. *Fredericksburg*, 179 Va. 556, 19 S. E. (2nd) 682, and suggested as a possibility by Mr. Justice Murphy in his dissenting opinion, *Jones* v. *Opelika*, 316 U. S. 584, 617.

The controlling principle in these cases is that long ago enunciated by this Court in *Boyd* v. *United States*, 116 U. S. 616, 635:

> "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of the courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be *obsta principiis.*"

Conclusion.

In the religious practices of the Seventh-Day Adventists there is no peril to the State. On the contrary, their Denomination has been and still is a pillar of the State. They ask the protection of this Court that they may survive. Tyranny and lawlessness reside in these ordinances—not in the faith of these good people. The ordinances must be stricken down—not the religion.

Respectfully submitted,

HOMER CUMMINGS,
MILLWARD C. TAFT,
Counsel for the General Conference of Seventh-Day Adventists.

March, 1943.

(10)

SUPREME COURT OF THE UNITED STATES.

Nos. 280, 314 and 966.—October Term, 1941.

280	Rosco Jones, Petitioner, *vs.* City of Opelika.	On Writ of Certiorari to the Supreme Court of the State of Alabama.
314	Lois Bowden and Zada Sanders, Petitioners, *vs.* City of Fort Smith, Arkansas.	On Writ of Certiorari to the Supreme Court of the State of Arkansas.
966	Charles Jobin, Appellant, *vs.* The State of Arizona.	Appeal from the Supreme Court of the State of Arizona.

[June 8, 1942.]

Mr. Justice Reed delivered the opinion of the Court.

By writ of certiorari in Nos. 280 and 314 and by appeal in No. 966 we have before us the question of the constitutionality of various city ordinances imposing the license taxes upon the sale of printed matter for nonpayment of which the appellant, Jobin, and the petitioners, Jones, Bowden and Sanders, all members of the organization known as Jehovah's Witnesses, were convicted.

No. 280.

The City of Opelika, Alabama, filed a complaint in the Circuit Court of Lee County charging petitioner Jones with violation of its licensing ordinance by selling books without a license, by operating as a Book Agent without a license, and by operating as a transient agent, dealer or distributor of books without a license.[1] The license fee for Book Agents (Bibles excepted) was $10 per annum, that for transient agents, dealers or distributors of books

1 "4. Penalties. It shall be unlawful for any person . . . to engage in any of the businesses or vocations for which a license may be required without first having procured a license therefor, and any violation hereof shall constitute a criminal offense, and shall be punishable by fine . . . and by imprisonment.

"9. Persons Engaged In Two or More Vocations. All trades or vocations dealing in two or more of the articles or engaged in two or more of the trades

$5.[2] Under section 1 of the ordinance all licenses were subject to revocation in the discretion of the City Commission, with or without notice.[3] There is a clause providing for severance in case of invalidity of any section, condition or provision.[4] Petitioner demurred, alleging that the ordinance because of unlimited discretion in revocation and requirement of a license was an unconstitutional encroachment upon freedom of the press. During the trial without a jury these contentions, with the added claim of interference with freedom of religion, were renewed at the end of the city's case, and at the close of all the evidence. The court overruled these motions, and found petitioner guilty on evidence that without a license he had been displaying pamphlets in his upraised hand and walking on a city street selling them two for five cents.[5] The court excluded as irrelevant testimony designed to

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or vocations for which licenses are required by the City, shall pay for and take out licenses for each line of business, calling or vocation.

. . . . . .

"12. Vocations Not Specified Herein. Any applicant desiring to conduct any business or vocation other than those specified in this license ordinance shall make application to the President of the Commission, who shall thereon fix a reasonable license for such business or vocation and instruct the Clerk as to the amount so fixed."

[2] "Agents (Annual Only)

Book Agents (Bibles excepted)	10.00
. . . . .	
Transient or itenirant agents selling rugs, antiques, goods, wares, merchandise or taking orders for same	25.00
. . . . .	
"Peddlers, or itinerant dealers, distributors or salesmen not otherwise included in this schedule (Annual Only)	75.00
. . . . .	
"Transient Agents or Dealers or Distributors of Books (Annual Only)	5.00
"Transient Dealers (Not covered heretofore in this schedule, definition same as transient dealer.)	25.00

. . . . . .

"There will be an issuance fee of $0.50 added to and collected on each license."

[3] "1. Right of City to Revoke. All licenses, permits or other grants to carry on any business, trade, vocation, or professions for which a charge is made by the City shall be subject to revocation in the discretion of the City Commission, with or without notice to the licensee."

[4] "Should any section, condition, or provision or any rate or amount scheduled as against any particular occupation exhibited in the foregoing schedule be held void or invalid, such invalidity shall not affect any other section, rate or provision of this license schedule."

[5] His wife was selling pamphlets from a portable stand on the sidewalk nearby.

show that the petitioner was an ordained minister, and that his activities were in furtherance of his beliefs and the teachings of Jehovah's Witnesses. Once again by an unsuccessful motion for new trial the constitutional issues were raised. The Court of Appeals of Alabama reversed the conviction on appeal because it thought the unlimited discretion of the City Commission to revoke the licenses invalidated the ordinance. Without discussion of this point the Supreme Court of Alabama decided that nondiscriminatory licensing of the sale of books or tracts was constitutional, reversed the Court of Appeals, and stayed execution pending certiorari. 241 Ala. 279, 3 So. 2d 76. This Court, having granted certiorari, 314 U. S. 593, dismissed the writ for lack of a final judgment. — U. S. —. The Court of Appeals thereupon entered a judgment sustaining the conviction, which was affirmed by the Alabama Supreme Court and is final. — Ala. —. We therefore grant the petition for rehearing of the dismissal of the writ, and proceed with the consideration of the case.

No. 314.

Petitioners Bowden and Sanders were arrested by police officers of Fort Smith, Arkansas, brought before the Municipal Court on charges of violation of City Ordinance No. 1172, and convicted. They appealed to the Sebastian Circuit Court, and there moved to dismiss on the ground that the ordinance was an unconstitutional restriction of freedom of religion and of the press, contrary to the Fourteenth Amendment. The circuit judge heard the case de novo without a jury on stipulated facts. The ordinance required a license "For each person peddling dry goods, notions, wearing apparel, household goods or other articles not herein or otherwise specifically mentioned $25 per month, $10 per week, $2.50 per day."[6] The petitioners, in the exercise of their beliefs concerning their duty to preach the gospel, admitted going from house to house without a license, playing phonographic

[6] "Be it Ordained by the Board of Commissioners of the City of Fort Smith, Arkansas:

"Section 1. That the license hereinafter named shall be fixed and imposed and collected at the following rates and sums and it shall be unlawful for any person or persons to exercise or pursue any of the following vocations of business in the city of Fort Smith, Arkansas, without first having obtained a license therefor from the city clerk and having paid for the same. . . .

"Section 40. For each person peddling dry goods, notions, wearing apparel, household goods or other articles not herein or otherwise specifically mentioned $25 per month, $10 per week, $2.50 per day. A person, firm or corporation using two or more men in their peddling business $50 per annum."

transcriptions of Bible lectures, and distributing books setting forth their views to the residents in return for a contribution of twenty-five cents per book. When persons desiring books were unable to contribute, the books were in some instances given away free. The Circuit judge concluded as a matter of law that the books were "other goods" and that petitioners were guilty of peddling without a license. A motion for new trial was denied. On appeal the Supreme Court of Arkansas held the ordinance constitutional on the authority of its previous decision in *Cook* v. *Harrison*, 180 Ark. 546, 21 S. W. 2d 966, and affirmed the convictions. 202 Ark. 614, 151 S. W. 2d 1000. This Court denied certiorari, 314 U. S. 651, but later, because of the similarity of the issues presented to those in the *Jobin* case, No. 966, vacated the denial of certiorari and issued a writ. — U. S. —

No. 966.

The City of Casa Grande, Arizona, by ordinance made it a misdemeanor for any person to carry on any occupation or business specified without first procuring a license.[7] Transient merchants, peddlers and street vendors were listed as subject to a quarterly license fee of $25.00, payable in advance.[8] In the Superior Court of Pinal County Jobin was tried and convicted by a jury on a complaint charging that not having "a permanent place of business in the City" he there carried on the "business of peddling, vending, selling, offering for sale and soliciting the sale of goods, wares and merchandise, to wit: pamphlets, books and publications without first having procured a license," contrary to

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[7] "Section 1. It shall be unlawful for any person . . . to carry on any trade, calling, profession, occupation or business, in this ordinance specified, without first having procured a license from the City of Casa Grande, so to do, . . . and each and every day or fractional part of a day that any trade, calling, profession, business or occupation in this ordinance specified is conducted or carried on without such license shall be a misdemeanor, . . .

"Section 2. It shall be the duty of the City Clerk . . . to prepare and to issue a license under this ordinance for every person . . . liable to pay a license hereunder. . . .

"Section 4. . . . Every person having such a license, and not having a fixed place of business shall carry such license with him at all times while carrying on the trade . . . or business for which the same was granted. Every person . . . having a license . . . shall produce and exhibit the same, . . . whenever requested to do so by any police officer or by any other officer authorized to issue, inspect or collect licenses."

[8] "Section 12. Peddlers, Transient Merchants; Vendors. defined:

(A) 'Transient Merchant' within the meaning of this ordinance shall include every person who, not for or in connection with a business at a fixed

the ordinance. The evidence for the state showed that without a license the appellant called at two homes and a laundry and offered for sale and sold books and pamphlets of a religious nature. At one home, accompanied by his wife, he was refused admission, but was allowed by the girl who came to the door to play a portable phonograph on the porch. The girl purchased one of his stock of books, "Religion," for a quarter, and received a pamphlet free. During the conversation he stated that he was an ordained minister preaching the gospel and quoted passages from the Bible. At the second home the lady of the house allowed him and his wife to enter and play the phonograph, but she refused to buy either books or pamphlets. When departing the appellant left some literature on the table although informed by the lady that it would not be read and had better be given to someone else. At the laundry the appellant introduced himself as one of the Jehovah's Witnesses and discussed with the proprietor their work and religion generally. The proprietor bought the book "Religion" for a quarter but declined to buy others at the same price. He was given a pamphlet free. When arrested the appellant stated that he was "selling religious books and preaching the gospel of the kingdom," and that because of his religious beliefs he would not take out a license. A motion at the close of the evidence for a directed verdict of acquittal on the ground that the ordinance violated the Fourteenth Amendment was denied. The jury was instructed to acquit unless it found the defendant was selling books or pamphlets. It returned a verdict of guilty. On appeal the Supreme Court of Arizona held that the ordinance, an "ordinary occupational license tax ordinance," did not deny freedom of religion and of the press and

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place within the City of Casa Grande, solicits orders from house to house for the future delivery of goods, or who shall deliver goods previously solicited by a solicitor, at retail, or an order for future delivery.

(B) As used in this ordinance, the term 'peddlers' shall include solicitors and other vendors not having a permanent place of business in the City of Casa Grande, and who are not specifically licensed or permitted to sell any class of goods whatsoever.

(C) As used in this Ordinance, the term 'Street Vendors' includes all persons engaged in selling in or upon the streets, alleys or vacant grounds within the City, any goods, wares, merchandise or articles, including photographs, and also includes all persons engaged in conducting upon the streets, alleys, or vacant grounds of the City any ring, knife or similar game, or any 'faker' business, game or device.

All persons coming within the definition of the occupations defined herein shall pay a quarterly license fee of Twenty Five Dollars ($25.00), in advance."

affirmed the conviction. 118 P. 2d 97. An appeal to this Court was allowed under § 237 of the Judicial Code, 28 U. S. C. § 344.

The Opelika ordinance required book agents to pay $10.00 per annum, transient distributors of books (annual only) $5.00. The license fee in Casa Grande was $25 per quarter, that in Fort Smith ranged from $2.50 per day to $25 per month. All the fees were small, yet substantial. But the appellant and the petitioners, so far as the records disclose, advanced no claim and presented no proof in the courts below that these fees were invalid because so high as to make the cost of compliance a deterrent to the further distribution of their literature in those cities. Although petitioners in No. 314 contended that their enterprise was operated at a loss, there was no suggestion that they could not obtain from the same sources which now supply the funds to meet whatever deficit there may be sums sufficient to defray license fees also. The amount of the fees was not considered in the opinions below except for a bare statement by the Alabama court that the exaction was "reasonable", and neither the briefs nor the assignments of error in this Court have directed their attack specifically to that issue. Consequently there is not before us the question of the power to lay fees, objectionable in their effect because of their size, upon the constitutionally protected rights of free speech, press or the exercise of religion. If the size of the fees were to be considered, to reach a conclusion one would desire to know the estimated volume, the margin of profit, the solicitor's commission, the expense of policing and other pertinent facts of income and expense. In the circumstances we venture no opinion concerning the validity of license taxes if it were proved, or at least distinctly claimed, that the burden of the tax was a substantial clog upon activities of the sort here involved.[9] The sole constitutional question considered is whether a nondiscriminatory license fee, presumably appropriate in amount, may be imposed upon these activities.

We turn to the constitutional problem squarely presented by these ordinances. There are ethical principles of greater value to mankind than the guarantees of the Constitution, personal liberties which are beyond the power of government to impair. These

[9] Cf. Seaboard Air Line Ry. v. Watson, 287 U. S. 86; New York v. Kleinert, 268 U. S. 646; Dewey v. Des Moines, 173 U. S. 193; and Clark v. Paul Gray, Inc., 306 U. S. 583; Standard Stock Food Co. v. Wright, 225 U. S. 540.

principles and liberties belong to the mental and spiritual realm where the judgments and decrees of mundane courts are ineffective to direct the course of man. The rights of which our Constitution speaks have a more earthy quality. They are not absolutes[10] to be exercised independently of other cherished privileges, protected by the same organic instrument. Conflicts in the exercise of rights arise and the conflicting forces seek adjustments in the courts, as do these parties, claiming on the one side the freedom of religion, speech and the press, guaranteed by the Fourteenth Amendment,[11] and on the other the right to employ the sovereign power explicitly reserved to the State by the Tenth Amendment to ensure orderly living without which constitutional guarantees of civil liberties would be a mockery.[12] Courts, no more than Constitutions, can intrude into the consciences of men or compel them to believe contrary to their faith or think contrary to their convictions, but courts are competent to adjudge the acts men do under color of a constitutional right, such as that of freedom of speech or of the press or the free exercise of religion and to determine whether the claimed right is limited by other recognized powers, equally precious to mankind.[13] So the mind and spirit of man remain forever free, while his actions rest subject to necessary accommodation to the competing needs of his fellows.

If all expression of religion or opinion, however, were subject to the discretion of authority, our unfettered dynamic thoughts or moral impulses might be made only colorless and sterile ideas. To give them life and force, the Constitution protects their use. No difference of view as to the importance of the freedoms of press or religion exist. They are "fundamental personal rights and liberties." *Schneider* v. *State,* 308 U. S. 147, 161. To proscribe the dissemination of doctrines or arguments which do not trans-

[10] Valentine v. Chrestensen, No. 707, October Term 1941, slip opinion, p. 2; Chaplinsky v. New Hampshire, No. 255, October Term 1941, slip opinion, p. 3 and cases cited; Minersville District v. Gobitis, 310 U. S. 586, 594; Cantwell v. Connecticut, 310 U. S. 296, 304, 310; Schneider v. State, 308 U. S. 147, 165; Hague v. C. I. O., 307 U. S. 496, 515-16; De Jonge v. Oregon, 299 U. S. 353, 364.

[11] Chaplinsky v. New Hampshire, No. 255, October Term 1941, slip opinion p. 2; Cantwell v. Connecticut, 310 U. S. 296, 303; Schneider v. State, 308 U. S. 147, 160; Lovell v. Griffin, 303 U. S. 444, 450; Gitlow v. New York, 268 U. S. 652.

[12] Cox v. New Hampshire, 312 U. S. 569, 574; Home Bldg. & L. Assn. v. Blaisdell, 290 U. S. 398, 435.

[13] Cantwell v. Connecticut, 310 U. S. 296, 303; Reynolds v. United States, 98 U. S. 145, 166.

gress military or moral limits is to destroy the principal bases of democracy,—knowledge and discussion. One man, with views contrary to the rest of his compatriots, is entitled to the privilege of expressing his ideas by speech or broadside to anyone willing to listen or to read. Too many settled beliefs have in time been rejected to justify this generation in refusing a hearing to its own dissentients. But that hearing may be limited by action of the proper legislative body to times, places and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and good order.

This means that the proponents of ideas cannot determine entirely for themselves the time and place and manner for the diffusion of knowledge or for their evangelism, any more than the civil authorities may hamper or suppress the public dissemination of facts and principles by the people.[14] The ordinary requirements of civilized life compel this adjustment of interests. The task of reconcilement is made harder by the tendency to accept as dominant any contention supported by a claim of interference with the practice of religion or the spread of ideas. Believing as this nation has from the first that the freedoms of worship and expression are closely akin to the illimitable privileges of thought itself, any legislation affecting those freedoms is scrutinized to see that the interferences allowed are only those appropriate to the maintenance of a civilized society. The determination of what limitations may be permitted under such an abstract test rests with the legislative bodies, the courts, the executive and the people themselves guided by the experience of the past, the needs of revenue for law enforcement, the requirements and capacities of police protection, the dangers of disorder and other pertinent factors.

Upon the courts falls the duty of determining the validity of such enactments as may be challenged as unconstitutional by litigants.[15] In dealing with these delicate adjustments this Court denies any place to administrative censorship of ideas or capricious approval of distributors. In *Lovell* v. *Griffin*, 303 U. S. 444, the requirement of permission from the city manager in-

[14] Cox *v.* New Hampshire, 312 U. S. 569, 573, 576; Cantwell *v.* Connecticut, 310 U. S. 296, 306; Schneider *v.* State, 308 U. S. 147, 160.

[15] Cf. Schneider *v.* State, *supra*, 161.

validated the ordinance, pp. 447 and 451; in *Schneider* v. *State*, that of a police officer, pp. 157 and 163. In the *Cantwell* case, the secretary of the public welfare council was to determine whether the object of charitable solicitation was worthy, p. 302. We held the requirement bad.[16] Ordinances absolutely prohibiting the exercise of the right to disseminate information are, a fortiori, invalid.[17]

The differences between censorship and complete prohibition, either of subject matter or the individuals participating, upon the one hand, and regulation of the conduct of individuals in the time, manner and place of their activities upon the other, are decisive. "One who is a martyr to a principle . . . does not prove by his martyrdom that he has kept within the law," said Mr. Justice Cardozo concurring in *Hamilton* v. *Regents*, 293 U. S. 245, 268, which held that conscientious objection to military training would not excuse a student, during his enrollment, from attending required courses in that science.[18] There is to be noted, too, a distinction between nondiscriminatory regulation of operations which are incidental to the exercise of religion or the freedom of speech or the press and those which are imposed upon the religious rite itself or the unmixed dissemination of information. Casual reflection verifies the suggestion that both teachers and preachers need to receive support for themselves as well as alms and benefactions for charity and the spread of knowledge. But when, as in these cases, the practitioners of these noble callings choose to utilize the vending of their religious books and tracts as a source of funds, the financial aspects of their transactions need not be wholly disregarded. To subject any religious or didactic group to a reasonable fee for their money-making activities does not require a finding that the licensed acts are purely commercial. It is enough that money is earned by the sale of articles. A book agent cannot escape a license requirement by a plea that it is a tax on knowledge. It would hardly be contended that the publication of newspapers is not subject to the

[16] Cf. Hague v. C. I. O., 307 U. S. 496, 516.

[17] Hague v. C. I. O., 307 U. S. 496, 501, 518, invalidates an ordinance forbidding any person to "distribute or cause to be distributed or strewn about any street or public place any newspapers, paper, periodical, book, magazine, circular, card, or pamphlet," p. 501; Schneider v. State, 308 U. S. 147, 162, holds similar prohibitory ordinances unconstitutional.

[18] Cf. City of Manchester v. Leiby, 117 F. 2d 661, requirement of badge for street selling of books, papers or pamphlets.

usual governmental fiscal exactions, *Giragi* v. *Moore*, 301 U. S. 670; 48 Ariz. 33, 49 Ariz, 74, or the obligations placed by statutes on other business. *Associated Press* v. *Labor Board*, 301 U. S. 103, 130. The Constitution draws no line between a payment from gross receipts or a net income tax and a suitably calculated occupational license. Commercial advertising cannot escape control by the simple expedient of printing matter of public interest on the same sheet or handbill. *Valentine* v. *Chrestensen*, No. 707, October Term 1941. Nor does the fact that to the participants a formation in the streets is an "information march," and "one of their ways of worship," suffice to exempt such a procession from a city ordinance which, narrowly construed, required a license for such a parade.[19]

When proponents of religious or social theories use the ordinary commercial methods of sales of articles to raise propaganda funds, it is a natural and proper exercise of the power of the state to charge reasonable fees for the privilege of canvassing. Careful as we may and should be to protect the freedoms safeguarded by the Bill of Rights, it is difficult to see in such enactments a shadow of prohibition of the exercise of religion or of abridgement of the freedom of speech or the press. It is prohibition and unjustifiable abridgement which is interdicted, not taxation. Nor do we believe it can be fairly said that because such proper charges may be expanded into unjustifiable abridgements they are therefore invalid on their face. The freedoms claimed by those seeking relief here are guaranteed against abridgement by the Fourteenth Amendment. Its commands protect their rights. The legislative power of municipalities must yield when abridgement is shown. Compare *Grosjean* v. *American Press Co.*, 297 U. S. 233, with *Giragi* v. *Moore*, 301 U. S. 670. If we were to assume, as is here argued, that the licensed activities involve religious rites, a different question would be presented. These are not taxes on free will offerings. But it is because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid. A tax on religion or a tax on interstate commerce may alike be forbidden by the Constitution. It does not follow that licenses for selling Bibles or for manufacture of articles of general use, measured by extra-state sales, must fall. It may well be that the wisdom of American communities

[19] Cox v. New Hampshire, 312 U. S. 569, 572, 573, 576.

will persuade them to permit the poor and weak to draw support from the petty sales of religious books without contributing anything for the privilege of using the streets and conveniences of the municipality. Such an exemption, however, would be a voluntary, not a constitutionally enforced, contribution.

In the ordinances of Casa Grande and Fort Smith, we have no discretionary power in the public authorities to refuse a license to any one desirous of selling religious literature. No censorship of the material which enters into the books or papers is authorized. No religious symbolism is involved such as was urged against the flag salute in *Minersville District* v. *Gobitis*, 310 U. S. 586. For us there is no occasion to apply here the principles taught by that opinion. Nothing more is asked from one group than from another which uses similar methods of propagation. We see nothing in the collection of a nondiscriminatory license fee, uncontested in amount, from those selling books or papers, which abridges the freedoms of worship, speech or press. Cf. *Grosjean* v. *American Press Co.*, 297 U. S. 233, 250. As to the claim that even small license charges, if valid, will impose upon the itinerant colporteur a crushing aggregate, it is plain that if each single fee is, as we assume, commensurate with the activities licensed, then though the accumulation of fees from city to city may in time bulk large, he will have enjoyed a correlatively enlarged field of distribution. Cf. *Coverdale* v. *Pipe Line Co.*, 303 U. S. 604, 612-613. The First Amendment does not require a subsidy in the form of fiscal exemption. *Giragi* v. *Moore*, *supra*. Accordingly the challenge to the Fort Smith and Casa Grande ordinances fails.

There is an additional contention by petitioner as to the Opelika ordinance. It is urged that since the licenses were revocable, arbitrarily, by the local authorities, note 3, *supra*, there can be no true freedom for petitioners in the dissemination of information because of the censorship upon their actions after the issuance of the license. But there has been neither application for nor revocation of a license. The complaint was bottomed on sales without a license. It was that charge against which petitioner claimed the protection of the Constitution. This issue he had standing to raise. *Smith* v. *Cahoon*, 283 U. S. 553, 562. From what has been said previously it follows that the objection to the unconstitutionality of requiring a license fails. There is no occasion, at this time, to pass on the validity of the revocation section, as it does not affect his present

defense. *Highland Farms Dairy* v. *Agnew*, 300 U. S. 608, 616; *Lehon* v. *City of Atlanta*, 242 U. S. 53, 56.

In *Lovell* v. *Griffin*, 303 U. S. 444, we held invalid a statute which placed the grant of a license within the discretion of the licensing authority. By this discretion, the right to obtain a license was made an empty right. Therefore the formality of going through an application was naturally not deemed a prerequisite to insistence on a constitutional right. Here we have a very different situation. A license is required that may properly be required. The fact that such a license, if it were granted, may subsequently be revoked does not necessarily destroy the licensing ordinance. The hazard of such revocation is much too contingent for us now to declare the licensing provisions to be invalid. *Lovell* v. *Griffin* has, in effect, held that discretionary control in the general area of free speech is unconstitutional. Therefore, the hazard that the license properly granted would be improperly revoked is far too slight to justify declaring the valid part of the ordinance, which is alone now at issue, also unconstitutional.

The judgments in Nos. 280, 314 and 966 are

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 280, 314 and 966.—October Term, 1941.

280	Rosco Jones, Petitioner, *vs.* City of Opelika.	On Writ of Certiorari to the Supreme Court of the State of Alabama.
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966	Charles Jobin, Appellant, *vs.* The State of Arizona.	Appeal from the Supreme Court of the State of Arizona.

[June 8, 1942.]

Mr. Chief Justice Stone.

The First Amendment, which the Fourteenth makes applicable to the states, declares: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press". I think that the ordinance in each of these cases is on its face a prohibited invasion of the freedoms thus guaranteed, and that the judgment in each should be reversed.

The ordinance in the *Opelika* case should be held invalid on two independent grounds. One is that the annual tax in addition to the 50 cent "issuance fee" which the ordinance imposes is an unconstitutional restriction on those freedoms, for reasons which will presently appear. The other is that the requirement of a license for dissemination of ideas, when as here the license is revocable at will without cause and in the unrestrained discretion of administrative officers, is likewise an unconstitutional restraint on those freedoms.

The sole condition which the Opelika ordinance prescribes for grant of the license is payment of the designated annual tax and issuance fee. The privilege thus purchased, for the period of a year, is forthwith revocable in the unrestrained and unreviewable discretion of the licensing commission without cause and without notice or opportunity for a hearing. The case presents in its bald-

est form the question whether the freedoms which the Constitution purports to safeguard can be completely subjected to uncontrolled administrative action. Only recently this Court was unanimous in holding void on its face the requirement of a license for the distribution of pamphlets which was to be issued in the sole discretion of a municipal officer. *Lovell* v. *Griffin*, 303 U. S. 444, 451. The precise ground of our decision was that the ordinance made enjoyment of the freedom which the Constitution guarantees contingent upon the uncontrolled will of administrative officers. We declared:

"We think that the ordinance is invalid on its face. Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship. The struggle for the freedom of the press was primarily directed against the power of the licensor. It was against that power that John Milton directed his assault by his 'Appeal for the Liberty of Unlicensed Printing.' And the liberty of the press became initially a right to publish '*without* a license what formerly could be published only *with* one.' While this freedom from previous restraint upon publication cannot be regarded as exhausting the guaranty of liberty, the prevention of that restraint was a leading purpose in the adoption of the constitutional provision."

That purpose cannot rightly be defeated by so transparent a subterfuge as the pronouncement that, while a license may not be required if its award is contingent upon the whim of an administrative officer, it may be if its retention and the enjoyment of the privilege which it purports to give is wholly contingent upon his whim. In either case enjoyment of the freedom is dependent upon the same contingency and the censorship is as effective in one as in the other. Nor is any palliative afforded by the assertion that the defendant's failure to apply for a license deprives him of standing to challenge the ordinance because of its revocation provision, by the terms of which retention of the license and exercise of the privilege may be cut off at any time without cause.

Indeed, the present ordinance is a more callous disregard of the constitutional right than that exhibited in *Lovell* v. *Griffin*, *supra*. There at least the defendant might have been given a license if he had applied for it. In any event he would not have been compelled to pay a money exaction for a license to exercise the privilege of free speech—a license which if granted in this case would have been wholly illusory. Here the defendant Jones was prohibited from distributing his pamphlets at all unless he paid in advance a

year's tax for the exercise of the privilege and subjected himself to termination of the license without cause, notice or hearing, at the will of city officials. To say that he who is free to withhold at will the privilege of publication exercises a power of censorship prohibited by the Constitution, but that he who has unrestricted power to withdraw the privilege does not, would be to ignore history and deny the teachings of experience, as well as to perpetuate the evils at which the First Amendment was aimed.

It is of no significance that the defendant did not apply for a license. As this Court has often pointed out, when a licensing statute is on its face a lawful exercise of regulatory power, it will not be assumed that it will be unlawfully administered in advance of an actual denial of application for the license. But here it is the prohibition of publication, save at the uncontrolled will of public officials, which transgresses constitutional limitations and makes the ordinance void on its face. The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands. *Lovell* v. *Griffin, supra,* 452-53; *Smith* v. *Cahoon,* 283 U. S. 553, 562. The question of standing to raise the issue in this case is indistinguishable from that in the *Lovell* case, where it was resolved in the only manner consistent with the First Amendment.

The separability provision of the Opelika ordinance[1] cannot serve, in advance of judicial decision by the state court, to separate those parts which are constitutionally applicable from those which are not. We have no means of knowing that the city would grant any license if the license could not be made revocable at will. The state court applied the ordinance as written. It did not rely or pass upon the effect to be given to the separability clause, or determine whether any effect was to be given to it. Until it has done so this Court—as we decided only last Monday—must determine the constitutional validity of the ordinance as it stands and as it stood when obedience to it was demanded and punishment for its violation inflicted. No. 782, *Skinner* v. *Oklahoma,* decided June 1, 1942; *Smith* v. *Cahoon, supra,* 563-64.

In all three cases the question presented by the record and fully argued here and below is whether the ordinances—which as ap-

[1] "Should any section, condition, or provision or any rate or amount scheduled as against any particular occupation exhibited in the foregoing schedule be held void or invalid, such invalidity shall not affect any other section, rate or provision of this license schedule."

plied penalize the defendants for not having paid the flat fee taxes levied—violate the freedom of speech, press, and religion guaranteed by the First and Fourteenth Amendments. Defendants' challenge to the ordinances, naming them, is a challenge to the substantial taxes which they impose, in specified amounts, and not to some tax of a different or lesser amount which some other ordinance might levy. In their briefs here they argue, as upon the records they are entitled to do, that the taxes are an unconstitutional burden on the right of free speech and free religion comparable to license taxes which this Court has often held to be an inadmissible burden on interstate commerce. They argue also that the cumulative effect of such taxes, in town after town throughout the country, would be destructive of freedom of the press for all persons except those financially able to distribute their literature without soliciting funds for the support of their cause.

While these are questions which have been studiously left unanswered by the opinion of the Court, it seems inescapable that an answer must be given before the convictions can be sustained. Decision of them cannot rightly be avoided now by asserting that the amount of the tax has not been put in issue; that the tax is "uncontested in amount" by the defendants, and can therefore be assumed by us to be "presumably appropriate", "reasonable", or "suitably calculated"; that it has not been proved that the burden of the tax is a substantial clog on the activities of the defendants, or that those who have defrayed the expense of their religious activities will not willingly defray the license taxes also. All these are considerations which would seem to be irrelevant to the question now before us—whether a flat tax, more than a nominal fee to defray the expenses of a regulatory license, can constitutionally be laid on a non-commercial, non-profit activity devoted exclusively to the dissemination of ideas, educational and religious in character, to those persons who consent to receive them.

Nor is the essential issue here disguised by the reiterated characterization of these exactions, not as taxes but as "fees"—a characterization to which the records lend no support. All these ordinances on their face purport to be an exercise of the municipality's taxing power. In none is there the slightest pretense by the taxing authority, or the slightest suggestion by the state court, that the "fee" is to defray expenses of the licensing system. The amounts of the "fees", without more, demonstrate that

such a contention is groundless. In No. 280, Opelika itself contends that the issue relates solely to its power to raise money for general revenue purposes, and the Supreme Court of Alabama referred to the levy as a "reasonable" "tax." The tax exacted by Opelika, on the face of the ordinance, is in addition to a 50 cent "issuance fee", which alone is presumably what the city deems adequate to defray the cost of administering the licensing system. Similarly in the *Fort Smith* and *Casa Grande* cases, the state courts sustained the ordinances as a tax, and nothing else. If this litigation has involved any controversy—and the state courts all seemed to think that it did—the controversy has been one solely relating to the power to tax, and not the power to collect a "fee" to support a licensing system which, as has already been indicated, has no regulatory purpose other than that involved in the raising of revenue.

This Court has often had occasion to point out that where the state may, as a regulatory measure, license activities which it is without constitutional authority to tax, it may charge a small or nominal fee sufficient to defray the expense of licensing, and similarly it may charge a reasonable fee for the use of its highways by interstate motor traffic which it cannot tax. Compare *Clark* v. *Paul Gray, Inc.*, 306 U. S. 583, 598-600, with *Ingels* v. *Morf*, 300 U. S. 290, and cases cited; see *Cox* v. *New Hampshire;* 312 U. S. 569, 576-77. But we are not concerned in these cases with a nominal fee for a regulatory license, which may be assumed for argument's sake to be valid. Here the licenses are not regulatory, save as the licenses conditioned upon payment of the tax may serve to restrain or suppress publication. None of the ordinances, if complied with, purports to or could control the time, place or manner of the distribution of the books and pamphlets concerned. None has any discernible relationship to the police protection or the good order of the community. The only condition and purpose of the licenses under all three ordinances is suppression of the specified distributions of literature in default of the payment of a substantial tax fixed in amount and measured neither by the extent of the defendants' activities under the license nor the amounts which they receive for and devote to religious purposes in the exercise of the licensed privilege. Opelika exacts a license fee for book agents of $10 per annum and of $5 per annum for transient distributors of books, in addition to a 50 cent "issuance fee" on each license. The Supreme Court of

Alabama found it unnecessary to determine whether both or only one of these taxes was payable by defendant Jones. The Fort Smith tax of $25 a month or $10 a week or $2.50 a day is substantial in amount for transient distributors of literature of the character here involved; the Opelika exaction is even more onerous when applied against one who may be in the city for only a day or two; and the tax of $25 per quarter exacted by the Casa Grande ordinance, adopted in a community having an adult population of less than 1,000 and applied to distributions of literature like the present, is prohibitive in effect.

In considering the effect of such a tax on the defendants' activities it is important to note that the state courts have applied levies obviously devised for the taxation of business employments—in the first case the "business or vocation" of "book agent"; in the second the business of peddling specified types of merchandise or "other articles"; in the third, the practice of the callings of "peddlers, transient merchants and venders"—to activities which concededly are not ordinary business or commercial transactions. As appears by stipulation or undisputed testimony, the defendants are Jehovah's Witnesses, engaged in spreading their religious doctrines in conformity to the teachings of St. Matthew, Matt. 10:11-14 and 24:14, by going from city to city, from village to village, and house to house, to proclaim them. After asking and receiving permission from the householder, they play to him phonograph records and tender to him books or pamphlets advocating their religious views. For the latter they ask payment of a nominal amount, two to five cents for the pamphlets and twenty-five cents for books, as a contribution to the religious cause which they seek to advance. But they distribute the pamphlets, and sometimes the books, gratis when the householder is unwilling or unable to pay for them. The literature is published for such distribution by non-profit charitable corporations organized by Jehovah's Witnesses. The funds collected are used for the support of the religious movement and no one derives a profit from the publication and distribution of the literature. In the *Opelika* case the defendant's activities were confined to distribution of literature and solicitation of funds in the public streets.

No one could doubt that taxation which may be freely laid upon activities not within the protection of the Bill of Rights could—when applied to the dissemination of ideas—be made the ready instrument for destruction of that right. Few would deny

that a license tax laid specifically on the privilege of disseminating ideas would infringe the right of free speech. For one reason among others, if the state may tax the privilege it may fix the rate of tax and, through the tax, control or suppress the activity which it taxes. *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 45; *Grosjean* v. *American Press Co.*, 297 U. S. 233, 244-45. If the distribution of the literature had been carried on by the defendants without solicitation of funds, there plainly would have been no basis, either statutory or constitutional, for levying the tax. It is the collection of funds which has been seized upon to justify the extension, to the defendants' activities, of the tax laid upon business callings. But if we assume, despite our recent decision in *Schneider* v. *State*, 308 U. S. 147, 163, that the essential character of these activities is in some measure altered by the collection of funds for the support of a religious undertaking, still it seems plain that the operation of the present flat tax is such as to abridge the privileges which the defendants here invoke.

It lends no support to the present tax to insist that its restraint on free speech and religion is non-discriminatory because the same levy is made upon business callings carried on for profit, many of which involve no question of freedom of speech and religion and all of which involve commercial elements—lacking here—which for present purposes may be assumed to afford a basis for taxation apart from the exercise of freedom of speech and religion. The constitutional protection of the Bill of Rights is not to be evaded by classifying with business callings an activity whose sole purpose is the dissemination of ideas, and taxing it as business callings are taxed. The immunity which press and religion enjoy may sometimes be lost when they are united with other activities not immune. *Valentine* v. *Chrestensen*, 315 U. S. —. But here the only activities involved are the dissemination of ideas, educational and religious, and the collection of funds for the propagation of those ideas, which we have said is likewise the subject of constitutional protection. *Schneider* v. *State, supra*; *Cantwell* v. *Connecticut*, 310 U. S. 296, 304-07.

The First Amendment is not confined to safeguarding freedom of speech and freedom of religion against discriminatory attempts to wipe them out. On the contrary the Constitution, by virtue of the First and the Fourteenth Amendments, has put those freedoms in a preferred position. Their commands are not restricted to cases where the protected privilege is sought out for attack. They extend

at least to every form of taxation which, because it is a condition of the exercise of the privilege, is capable of being used to control or suppress it.

Even were we to assume—what I do not concede—that there could be a lawful non-discriminatory license tax of a percentage of the gross receipts collected by churches and other religious orders in support of their religious work, cf. *Giragi* v. *Moore*, 301 U. S. 670, we have no such tax here. The tax imposed by the ordinances in these cases is more burdensome and destructive of the activity taxed than any gross receipts tax. The tax is for a fixed amount, unrelated to the extent of the defendants' activities or the receipts derived from them. It is thus the type of flat tax which, when applied to interstate commerce, has repeatedly been deemed by this Court to be prohibited by the commerce clause. See *McGoldrick* v. *Berwind-White Co.*, 309 U. S. 33, 55-57, and cases cited; cf. *Best* v. *Maxwell*, 311 U. S. 454, 456. When applied as it is here to activities involving the exercise of religious freedom, its vice is emphasized in that it is levied and paid in advance of the activities taxed, and applied at rates well calculated to suppress those activities save only as others may volunteer to pay the tax. It requires a sizable out-of-pocket expense by someone who may never succeed in raising a penny in his exercise of the privilege which is taxed.

The defendants' activities, if taxable at all, are taxable only because of the funds which they solicit. But that solicitation is for funds for religious purposes, and the present taxes are in no way gauged to the receipts. The taxes are insupportable either as a tax on the dissemination of ideas or as a tax on the collection of funds for religious purposes. For on its face a flat license tax restrains in advance the freedom taxed and tends inevitably to suppress its exercise. The First Amendment prohibits all laws abridging freedom of press and religion, not merely some laws or all except tax laws. It is true that the constitutional guaranties of freedom of press and religion, like the commerce clause, make no distinction between fixed-sum taxes and other kinds. But that fact affords no excuse to courts, whose duty it is to enforce those guaranties, to close their eyes to the characteristics of a tax which render it destructive of freedom of press and religion.

We may lay to one side the Court's suggestion that a tax otherwise unconstitutional is to be deemed valid unless it is shown that there are none who, for religion's sake, will come forward to pay

the unlawful exaction. The defendants to whom the ordinances have been applied have not paid it and there is nothing in the Constitution to compel them to seek the charity of others to pay it before protesting the tax. It seems fairly obvious that if the present taxes, laid in small communities upon peripatetic religious propagandists, are to be sustained, a way has been found for the effective suppression of speech and press and religion despite constitutional guaranties. The very taxes now before us are better adapted to that end than were the stamp taxes which so successfully curtailed the dissemination of ideas by eighteenth century newspapers and pamphleteers, and which were a moving cause of the American Revolution. See Collett, History of the Taxes on Knowledge, vol. 1, c. 1; May, Constitutional History of England, 7th ed., vol. 2, p. 245; Hanson, Government and the Press, 1695-1763, pp. 7-14; Morison, The English Newspaper, 1622-1932, pp. 83-88; *Grosjean* v. *American Press Co., supra,* 245-49. Vivid recollections of the effect of those taxes on the freedom of press survived to inspire the adoption of the First Amendment.

Freedom of press and religion, explicitly guaranteed by the Constitution, must at least be entitled to the same freedom from burdensome taxation which it has been thought that the more general phraseology of the commerce clause has extended to interstate commerce. Whatever doubts may be entertained as to this Court's function to relieve, unaided by Congressional legislation, from burdensome taxation under the commerce clause, see *Gwin, etc. Inc.* v. *Henneford,* 305 U. S. 434, 441, 446-55; *McCarroll* v. *Dixie Lines,* 309 U. S. 176, 184-85, it cannot be thought that that function is wanting under the explicit guaranties of freedom of speech, press and religion. In any case the flat license tax can hardly become any the less burdensome or more permissible, when levied on activities within the protection extended by the First and Fourteenth Amendments both to the orderly communication of ideas, educational and religious, to persons willing to receive them, see *Cantwell* v. *Connecticut, supra,* and to the practice of religion and the solicitation of funds in its support. *Schneider* v. *State, supra.*

In its potency as a prior restraint on publication the flat license tax falls short only of outright censorship or suppression. The more humble and needy the cause, the more effective is the suppression.

Mr. Justice BLACK, Mr. Justice DOUGLAS and Mr. Justice MURPHY join in this opinion.

SUPREME COURT OF THE UNITED STATES.

Nos. 280, 314 and 966.—October Term, 1941.

280	Roscoe Jones, Petitioner, *vs.* City of Opelika.	On Writ of Certiorari to the Supreme Court of the State of Alabama.
314	Lois Bowden and Zada Sanders, Petitioners, *vs.* City of Fort Smith, Arkansas.	On Writ of Certiorari to the Supreme Court of the State of Arkansas.
966	Charles Jobin, Appellant, *vs.* The State of Arizona.	Appeal from the Supreme Court of the State of Arizona.

[June 8, 1942.]

Mr. Justice Murphy, with whom the Chief Justice, Mr. Justice Black, and Mr. Justice Douglas concur, dissenting.

When a statute is challenged as impinging on freedom of speech, freedom of the press, or freedom of worship, those historic privileges which are so essential to our political welfare and spiritual progress, it is the duty of this Court to subject such legislation to examination, in the light of the evidence adduced, to determine whether it is so drawn as not to impair the substance of those cherished freedoms in reaching its objective. Ordinances that may operate to restrict the circulation or dissemination of ideas on religious or other subjects should be framed with fastidious care and precise language to avoid undue encroachment on these fundamental liberties. And the protection of the Constitution must be extended to all, not only to those whose views accord with prevailing thought but also to dissident minorities who energetically spread their beliefs. Being satisfied by the evidence that the ordinances in the cases now before us, as construed and applied in the state courts, impose a burden on the circulation and discussion of opinion and information in matters of religion, and therefore

violate the petitioners'[1] rights to freedom of speech, freedom of the press, and freedom of worship in contravention of the Fourteenth Amendment, I am obliged to dissent from the opinion of the Court.

It is not disputed that petitioners, Jehovah's Witnesses, were ordained ministers preaching the gospel, as they understood it, through the streets and from house to house, orally and by playing religious records with the consent of the householder, and by distributing books and pamphlets setting forth the tenets of their faith. It does not appear that their motives were commercial, but only that they were evangelizing their faith as they saw it.

In No. 280 the trial court excluded as irrelevant petitioner's testimony that he was an ordained minister and that his activities on the streets of Opelika were in furtherance of his ministerial duties. The testimony of ten clergymen of Opelika that they distributed free religious literature in their churches, the cost of which was defrayed by voluntary contribution, and that they had never been forced to pay any license fee, was also excluded. It is admitted here that petitioner was a Jehovah's Witness and considered himself an ordained minister.

The Supreme Court of Arizona stated in No. 966 that appellant was "a regularly ordained minister of the denomination commonly known as Jehovah's Witnesses—going from house to house in the city of Casa Grande preaching the gospel, as he understood it, by means of his spoken word, by playing various religious records on a phonograph, with the approval of the householder, and by distributing printed books, pamphlets and tracts which set forth his views as to the meaning of the Bible. The method of distribution of these printed books, pamphlets and tracts was as follows: He first offered them for sale at various prices ranging from five to twenty-five cents each. If the householder did not desire to purchase any of them he then left a small leaflet summarizing some of the doctrines which he preached."

The facts were stipulated in No. 314. Each petitioner "claims to be an ordained minister of the gospel . . . They do not engage in this work for any selfish reason but because they feel called upon to publish the news and preach the gospel of the kingdom to all the world as a witness before the end comes. . . . They believe that the only effective way to preach is to go from house to house and make personal contact with the people and distribute

[1] For convenience appellant in No. 966, petitioners in No. 314, and petitioner in No. 280 are herein collectively referred to as "petitioners".

to them books and pamphlets setting forth their views on Christianity". Petitioners "were going from house to house in the residential section within the city of Fort Smith . . . presenting to the residents of these houses various booklets, leaflets and periodicals setting forth their views on Christianity held by Jehovah's Witnesses." They solicited "a contribution of twenty-five cents for each book," but "these books in some instances are distributed free when the people wishing them are unable to contribute."

There is no suggestion in any of these three cases that petitioners were perpetrating a fraud, that they were demeaning themselves in an obnoxious manner, that their activities created any public disturbance or inconvenience, that private rights were contravened, or that the literature distributed was offensive to morals or created any "clear and present danger" to organized society.

The ordinance in each case is sought to be sustained as a system of non-discriminatory taxation of various businesses, professions, and vocations, including the distribution of books for which contributions are asked, for the sole purpose of raising revenue.[2] Any inclination to take the position that petitioners, who were proselytizing by distributing informative literature setting forth their religious tenets, and whose activities were wholly unrelated to any commercial purposes, were not within the purview of these occupational tax ordinances,[3] is foreclosed by the decisions of the state courts below to the contrary. As so construed the ordinances in effect impose direct taxes on the dissemination of ideas and the distribution of literature, relating to and dealing with religious matters, for which a contribution is asked in an attempt to gain converts, because those were petitioners' activities. Such taxes have been held to violate the Fourteenth Amendment, *McConkey* v. *City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682; *State* v.

[2] Respondent in No. 280 contends that the question presented "in no respect relates to regulatory or police power action of a municipal government, but is concerned only with the municipality's right to levy taxes".

The Supreme Court of Arizona stated in No. 966 that "the ordinance on its face is the ordinary occupational license tax ordinance".

[3] Several courts have taken this position. State *ex rel.* Semansky *v.* Stark, 196 La. 307, 199 S. 129; People *v.* Finkelstein, 170 N. Y. Misc. 188, 9 N. Y. S. 2d 941; Thomas *v.* City of Atlanta, 59 Ga. App. 520, 1 S. E. 2d 598; State *v.* Meredith, 197 S. C. 351, 15 S. E. 2d 678; State *ex rel.* Hough *v.* Woodruff, 147 Fla. 299, 2 So. 2d 577; City of Cincinnati *v.* Mosier, 61 Ohio App. 81, 22 N. E. 2d 418. Compare, Gregg *v.* Smith, 8 L. R. Q. B. (1872-3), p. 302; City of Duncan *v.* Gairns, 27 Canadian Cr. Cases 440; but see Rex *v.* Stewart, 53 Canadian Cr. Cases 24.

Greaves, 112 Vt. 222, 22 A. 2d 497; *City of Blue Island* v. *Kozul*, 379 Ill. 511, 41 N. E. 2d 515; and that should be the holding here.[4]

Freedom of Speech and Freedom of the Press.

In view of the recent decisions of this Court striking down acts which impair freedom of speech and freedom of the press no elaboration on that subject is now necessary. We have "unequivocally held that the streets are proper places for the exercise of the freedom of communicating information and disseminating opinion and that, though the states and municipalities may appropriately regulate the privilege in the public interest, they may not unduly burden or proscribe its employment in these public thoroughfares." *Valentine* v. *Chrestensen*, — U. S. —, No. 707 this Term, decided April 13, 1942. And as the distribution of pamphlets to spread information and opinion on the streets and from house to house for non-commercial purposes is protected from the prior restraint of censorship, *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *Irvington*, 308 U. S. 147, so should it be protected from the burden of taxation.

The opinion of the Court holds that the amount of the tax is not before us and that a "nondiscriminatory license fee, presumably appropriate in amount, may be imposed upon these activities". Both of these holdings must be rejected.

Where regulation or infringement of the liberty of discussion and the dissemination of information and opinion are involved, there are special reasons for testing the challenged statute on its face. *Thornhill* v. *Alabama*, 310 U. S. 88, 96-98; and see *Lovell* v. *Griffin*, 303 U. S. 444, 452; *Drivers Union* v. *Meadowmoor Co.*, 312 U. S. 287, 297. That should be done here.[5]

Consideration of the taxes leads to but one conclusion—that they prohibit or seriously hinder the distribution of petitioners' religious literature. The opinion of the Court admits that all the taxes are "substantial". The $25 quarterly tax of Casa Grande approaches prohibition. The 1940 population of that town was 1,545. With so few potential purchasers it would take a gifted

[4] And see Rutledge, J., dissenting in Busey v. District of Columbia, — F. 2d —, decided April 15, 1942.

[5] When the Opelika ordinance is considered on its face, there is an additional reason for its invalidity. The uncontrolled power of revocation lodged with the local authorities is but the converse of the system of prior licensing struck down in Lovell v. Griffin, 303 U. S. 444. Here, as there, the pervasive threat of censorship inherent in such a power vitiates the ordinance.

evangelist, indeed, in view of the antagonism generally encountered by Jehovah's Witnesses, to sell enough tracts at prices ranging from five to twenty-five cents to gross enough to pay the tax. Cf. *McConkey* v. *City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682. While the amount is actually lower in Opelika[6] and may be lower in Fort Smith in that it is possible to get a license for a short period,[7] and while the circle of purchasers is wider in those towns,[8] these exactions also place a heavy hand on petitioners' activities. The petitioners should not be subjected to such tribute.

But whatever the amount, the taxes are in reality taxes upon the dissemination of religious ideas, a dissemination carried on by the distribution of religious literature for religious reasons alone and not for personal profit. As such they place a burden on freedom of speech, freedom of the press, and the exercise of religion even if the question of amount is laid aside. Liberty of circulation is the very life blood of a free press, cf. *Lovell* v. *Griffin*, 303 U. S. 444, 452, and taxes on the circulation of ideas have a long history of misuse against freedom of thought.[9] See *Grosjean* v. *American Press Co.*, 297 U. S. 233, 245-249. And taxes on circulation solely for the purpose of revenue were successfully resisted, prior to the adoption of the First Amendment, as interferences with freedom of the press.[10] Surely all this was familiar knowledge to the framers of the Bill of Rights. We need not shut our eyes to the possibility that use may again be made of such taxes, either by discrimination in enforcement or otherwise, to suppress the unpalatable views of militant minorities such

[6] $5 or $10, depending upon which section of the ordinance is held to apply.

[7] $2.50 per day, $10 per week, and $25 per month.

[8] The 1940 population of Fort Smith was 36,584 and that of Opelika, 8,487.

[9] The English Stamp Act of 1712, 10 Anne, c. 19, put a tax on newspapers and pamphlets to check what seemed to the Government to be "false and scandalous libels" and "the most horrid blasphemies against God and religion." This and subsequent enactments led to a long struggle in England for the repeal of these "taxes on knowledge" and the recognition of the freedom of the press. See Collett, History of the Taxes on Knowledge (1899); Place, Taxes on Knowledge (1831).

[10] Stamp taxes for purely revenue purposes were successfully resisted in Massachusetts in 1757 and again in 1785 on the ground that they interfered with freedom of the press. See Duniway, Freedom of the Press in Massachusetts (1906), pp. 119-120, 136-137; Thomas, History of Printing in America (1810), vol. 2, pp. 267-268. The press also vigorously opposed the Stamp Act of 1765, 5 Geo. III, c. 12, which was also a revenue measure. See Duniway, *op. cit.*, p. 124; Thomas, *op. cit.*, pp. 189, 297, 322, 329, 350; Van Tyne, Causes of the War of Independence (1922), p. 160; 15 Scottish Historical Review 322, 326.

as Jehovah's Witnesses. See *McConkey* v. *City of Fredericksburg*, 179 Va. 556, 19 S. E. 2d 682. As the evidence excluded in No. 280 tended to show, no attempt was there made to apply the ordinance to ministers functioning in a more orthodox manner than petitioner.

Other objectionable features in addition to the factor of historical misuse exist. There is the unfairness present in any system of flat fee taxation, bearing no relation to the ability to pay. And there is the cumulative burden of many such taxes throughout the municipalities of the land, as the number of recent cases involving such ordinances abundantly demonstrates.[11] The activities of Jehovah's Witnesses are widespread, and the aggregate effect of numerous exactions, no matter how small, can conceivably force them to choose between refraining from attempting to recoup part of the cost of their literature, or else paying out large sums in taxes. Either choice hinders and may even possibly put an end to their activities. There is no basis, other than a refusal to consider the characteristics of taxes such as these, for any assumption that such taxes are "commensurate with the activities licensed". Nor is there any assurance that "a correlatively enlarged field of distribution" will insure sufficient proceeds even to meet such exactions, let alone leaving any residue for the continuation of petitioners' evangelization.

Freedom of speech, freedom of the press, and freedom of religion all have a double aspect—freedom of thought, and freedom of action. Freedom to think is absolute of its own nature; the most tyrannical government is powerless to control the inward workings of the mind. But even an aggressive mind is of no missionary value unless there is freedom of action, freedom to communicate its message to others by speech and writing. Since in any form of action there is a possibility of collision with the rights of others, there can be no doubt that this freedom to act is not absolute but qualified, being subject to regulation in the public interest

[11] In addition to the instant cases see City of Cincinnati v. Mosier, 61 Ohio App. 81, 22 N. E. 2d 418; State v. Meredith, 197 S. C. 351, 15 S. E. 2d 678; Thomas v. City of Atlanta, 59 Ga. App. 520, 1 S. E. 2d 598; Commonwealth v. Reid, 20 A. 2d (Pa.) 841; People v. Banks, 188 N. Y. Misc. 515, 6 N. Y. S. 2d 41; Cook v. City of Harrison, 180 Ark. 546, 21 S. W. 2d 966; State v. Greaves, 112 Vt. 222, 22 A. 2d 497; Busey v. District of Columbia, — F. 2d —; McConkey v. City of Fredericksburg, 179 Va. 556, 19 S. E. 2d 682; City of Blue Island v. Kozul, 379 Ill. 511, 41 N. E. 2d 515; State *ex rel.* Semansky v. Stark, 196 La. 307, 199 S. 129; People v. Finkelstein, 170 N. Y. Misc. 188, 9 N. Y. S. 2d 941; State *ex rel.* Hough v. Woodruff, 147 Fla. 299, 2 So. 2d 577; Borchert v. City of Ranger, 42 F. Supp. 577.

which does not unduly infringe the right. However, there is no assertion here that the ordinances were regulatory, but if there were such a claim, they still should not be sustained. No abuses justifying regulation are advanced and the ordinances are not narrowly and precisely drawn to deal with actual, or even hypothetical evils, while at the same time preserving the substance of the right. Cf. *Thornhill* v. *Alabama*, 310 U. S. 88, 105; *Cantwell* v. *Connecticut*, 310 U. S. 296, 311. They impose a tax on the dissemination of information and opinion anywhere within the city limits, whether on the streets or from house to house. "As we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised elsewhere." *Schneider* v. *Irvington*, 308 U. S. 147, 163. These taxes abridge that liberty.

It matters not that petitioners asked contributions for their literature. Freedom of speech and freedom of the press cannot and must not mean freedom only for those who can distribute their broadsides without charge. There may be others with messages more vital but purses less full, who must seek some reimbursement for their outlay or else forego passing on their ideas. The pamphlet, an historic weapon against oppression,[12] *Lovell* v. *Griffin*, 303 U. S. 444, 452, is today the convenient vehicle of those with limited resources because newspaper space and radio time are expensive and the cost of establishing such enterprises great. If freedom of speech and freedom of the press are to have any concrete meaning, people seeking to distribute information and opinion, to the end only that others shall have the benefit thereof, should not be taxed for circulating such matter. It is unnecessary to consider now the validity of such taxes on commercial enterprises engaged in the dissemination of ideas. Cf. *Valentine* v. *Chrestensen*, No. 707 this Term, decided April 13, 1942; *Giragi* v. *Moore*, 301 U. S. 670. Petitioners were not engaged in a traffic for profit. While the courts below held their activities were covered by the ordinances, it is clear that they were seeking only to further their religious convictions by preaching the gospel to others.

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[12] The pamphlets of Paine were not distributed gratuitously. See Introduction to Paine's Political Writings (London, 1909), pp. 3, 5.

Pamphlets were extensively used in the struggle for religious freedom. See Greene, The Development of Religious Liberty in Connecticut (1905), pp. 282-283, 299-301.

The exercise, without commercial motives, of freedom of speech, freedom of the press, or freedom of worship are not proper sources of taxation for general revenue purposes. In dealing with a permissible regulation of these freedoms and the fee charged in connection therewith, we emphasized the fact that the fee "was not a revenue tax, but one to meet the expense incident to the administration of the Act and to the maintenance of public order", and stated only that, "There is nothing contrary to the Constitution in the charge of a fee limited to the purpose stated." *Cox* v. *New Hampshire*, 312 U. S. 569, 577. The taxes here involved are ostensibly for revenue purposes; they are not regulatory fees. Respondents do not show that the instant activities of Jehovah's Witnesses create special problems causing a drain on the municipal coffers, or that these taxes are commensurate with any expenses entailed by the presence of the Witnesses. In the absence of such a showing I think no tax whatever can be levied on petitioners' activities in distributing their literature or disseminating their ideas. If the guaranties of freedom of speech and freedom of the press are to be preserved, municipalities should not be free to raise general revenue by taxes on the circulation of information and opinion in non-commercial causes; other sources can be found, the taxation of which will not choke off ideas. Taxes such as the instant ones violate petitioners' right to freedom of speech and freedom of the press, protected against state invasion by the Fourteenth Amendment.

Freedom of Religion.

Under the foregoing discussion of freedom of speech and freedom of the press any person would be exempt from taxation upon the act of distributing information or opinion of any kind, whether political, scientific, or religious in character, when done solely in an effort to spread knowledge and ideas, with no thought of commercial gain. But there is another, and perhaps more precious reason why these ordinances cannot constitutionally apply to petitioners. Important as free speech and a free press are to a free government and a free citizenry, there is a right even more dear to many individuals—the right to worship their Maker according to their needs and the dictates of their souls and to carry their message or their gospel to every living creature. These ordinances infringe that right, which is also protected by the Fourteenth Amendment. *Cantwell* v. *Connecticut*, 310 U. S. 296.

Petitioners were itinerant ministers going through the streets and from house to house in different communities, preaching the

gospel by distributing booklets and pamphlets setting forth their views of the Bible and the tenets of their faith. While perhaps not so orthodox as the oral sermon, the use of religious books is an old, recognized and effective mode of worship and means of proselytizing.[13] For this petitioners were taxed. The mind rebels at the thought that a minister of any of the old established churches could be made to pay fees to the community before entering the pulpit. These taxes on petitioners' efforts to preach the "news of the Kingdom" should be struck down because they burden petitioners' right to worship the Deity in their own fashion and to spread the gospel as they understand it. There is here no contention that their manner of worship gives rise to conduct which calls for regulation, and these ordinances are not aimed at any such practices.

One need only read the decisions of this and other courts in the past few years to see the unpopularity of Jehovah's Witnesses and the difficulties put in their path because of their religious beliefs. An arresting parallel exists between the troubles of Jehovah's Witnesses and the struggles of various dissentient groups in the American colonies for religious liberty which culminated in the Virginia Statute for Religious Freedom,[14] the Northwest Ordinance of 1787,[15] and the First Amendment. In most of the colonies there was an established church, and the way of the dissenter was hard. All sects, including Quaker, Methodist, Baptist, Episcopalian, Separatist, Rogerine, and Catholic, suffered.[16] Many of the non-conforming ministers were itinerants, and measures were adopted to curb their unwanted activities. The books of certain denominations were banned.[17] Virginia and Connecticut had bur-

[13] See, The Volumes of the American Tract Society (1848), pp. 15-16, 24; Home Evangelization (1850), pp. 70-74; Lee, History of the Methodists (1810), p. 48.

[14] Adopted in 1785 through the efforts of Jefferson and Madison. Virginia Code of 1930, sec. 34.

[15] ARTICLE I. No person demeaning himself in a peaceable and orderly manner shall ever be molested on account of his mode of worship or religious sentiments in the said territory.

[16] See Works of Thomas Jefferson (1861), vol. VIII, pp. 398-402 (Notes on Virginia, Query XVII); Cobb, Rise of Religious Liberty in America (1902); Little, Imprisoned Preachers and Religious Liberty in Virginia (1938); Lee, History of the Methodists (1810), pp. 62-74; Greene, The Development of Religious Liberty In Connecticut (1905), pp. 158-180; Guilday, Life and Times of John Carroll (1922), vol. 1, Chapters V and VIII.

[17] Jefferson, *op. cit.*; Greene, *op. cit.*, p. 165.

densome licensing requirements.[18] Cf. *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *Irvington*, 308 U. S. 147; *Cantwell* v. *Connecticut*, 310 U. S. 296. Other states required oaths before one could preach which many ministers could not conscientiously take.[19] Cf. *Reid* v. *Borough of Brookville, Pa.*, 39 F. Supp. 30; *Kennedy* v. *City of Moscow*, 39 F. Supp. 26. Research reveals no attempt to control or persecute by the more subtle means of taxing the function of preaching, or even any attempt to tap it as a source of revenue.[20]

By applying these occupational taxes to petitioners' non-commercial activities, respondents now tax sincere efforts to spread religious beliefs, and a heavy burden falls upon a new set of itinerant zealots, the Witnesses. That burden should not be allowed to stand, especially if, as the excluded testimony in No. 280 indicates, the accepted clergymen of the town can take to their pulpits and distribute their literature without the impact of taxation. Liberty of conscience is too full of meaning for the individuals in this nation to permit taxation to prohibit or substantially impair the spread of religious ideas, even though they are controversial and run counter to the established notions of a community. If this Court is to err in evaluating claims that freedom of speech, freedom of the press, and freedom of religion have been invaded, far better that it err in being overprotective of these precious rights.

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[18] Little, *op. cit.*, pp. 11-13, 67-69; Greene, *op. cit.*, pp. 243, 262-263, 358; Cobb, *op. cit.*, pp. 98, 104, 358; Wright, Hawkers and Walkers in Early America (1927), Chapter X; Baldwin, The New England Clergy and the Revolution (1928), p. 59.

[19] The Journal of the Rev. Francis Asbury (1821), vol. 1, pp. 208, 253; Lee, *op. cit.*, pp. 62-74.

[20] The Stamp Act of 1765 exempted "any books containing only matters of devotion or piety". MacDonald, Documentary Source Book of American History (3d ed., 1934), p. 128.

SUPREME COURT OF THE UNITED STATES.

Nos. 280, 314 and 966.—October Term, 1941.

280	Rosco Jones, Petitioner, *vs.* City of Opelika.	On Writ of Certiorari to the Supreme Court of the State of Alabama.
314	Lois Bowden and Zada Sanders, Petitioners, *vs.* City of Fort Smith, Arkansas.	On Writ of Certiorari to the Supreme Court of the State of Arkansas.
966	Charles Jobin, Appellant, *vs.* The State of Arizona.	Appeal from the Supreme Court of the State of Arizona.

[June 8, 1942.]

Mr. Justice Black, Mr. Justice Douglas, Mr. Justice Murphy.

The opinion of the Court sanctions a device which in our opinion suppresses or tends to suppress the free exercise of a religion practiced by a minority group. This is but another step in the direction which *Minersville School District* v. *Gobitis*, 310 U. S. 586, took against the same religious minority and is a logical extension of the principles upon which that decision rested. Since we joined in the opinion in the *Gobitis* case, we think this is an appropriate occasion to state that we now believe that it was also wrongly decided. Certainly our democratic form of government functioning under the historic Bill of Rights has a high responsibility to accommodate itself to the religious views of minorities however unpopular and unorthodox those views may be. The First Amendment does not put the right freely to exercise religion in a subordinate position. We fear, however, that the opinions in these and in the *Gobitis* case do exactly that.

pgs 11 & 12 Reed J. dissent.

SUPREME COURT OF THE UNITED STATES.

Nos. 280, 314, 966.—October Term, 1941.

280	Roscoe Jones, Petitioner, *vs.* City of Opelika.	On Writ of Certiorari to the Supreme Court of the the State of Alabama.
314	Lois Bowden and Zada Sanders, Petitioners, *vs.* City of Fort Smith, Arkansas.	On Writ of Certiorari to the Supreme Court of the State of Arkansas.
966	Charles Jobin, Appellant, *vs.* The State of Arizona.	On Appeal from the Supreme Court of the State of Arizona.

[May 3, 1943.]

Per Curiam: The judgments in these cases were affirmed at the October Term, 1941. 316 U. S. 584. Because the issues in all three cases were of the same character as those brought before us in other cases by applications for certiorari at the present term, we ordered a reargument and heard these cases together with Nos. 480-487, *Murdock et al.* v. *Pennsylvania.* For the reasons stated in the opinion of the Court in Nos. 480-487, decided this day, and in the dissenting opinions filed in the present cases after the argument last term, the Court is of opinion that the judgment in each case should be reversed. The judgments of this Court heretofore entered in these cases are therefore vacated, and the judgments of the state courts are reversed.

So ordered.

SUPREME COURT OF THE UNITED STATES.

Nos. 480-487.—October Term, 1942.

480 Robert Murdock, Jr., Petitioner, vs. Commonwealth of Pennsylvania (City of Jeannette).

481 Anna Perisich, Petitioner, vs. Commonwealth of Pennsylvania (City of Jeannette).

482 Willard L. Mowder, Petitioner, vs. Commonwealth of Pennsylvania (City of Jeannette).

483 Charles Seders, Petitioner, vs. Commonwealth of Pennsylvania (City of Jeannette).

484 Robert Lamborn, Petitioner, vs. Commonwealth of Pennsylvania (City of Jeannette).

485 Anthony Maltezos, Petitioner, vs. Commonwealth of Pennsylvania (City of Jeannette).

486 Anastasia Tzanes, Petitioner, vs. Commonwealth of Pennsylvania (City of Jeannette).

487 Elaine Tzanes, Petitioner, vs. Commonwealth of Pennsylvania (City of Jeannette).

On Writs of Certiorari to the Superior Court of the Commonwealth of Pennsylvania.

[May 3, 1943.]

Mr. Justice Douglas delivered the opinion of the Court.

The City of Jeannette, Pennsylvania, has an ordinance, some forty years old, which provides in part:

"That all persons canvassing for or soliciting within said Borough, orders for goods, paintings, pictures, wares, or merchandise of any kind, or persons delivering such articles under orders so obtained or solicited, shall be required to procure from the Burgess a license to transact said business and shall pay to the Treasurer of said Borough therefore the following sums according to the time for which said license shall be granted.

"For one day $1.50, for one week seven dollars ($7.00), for two weeks twelve dollars ($12.00), for three weeks twenty dollars ($20.00), provided that the provisions of this ordinance shall not apply to persons selling by sample to manufacturers or licensed merchants or dealers doing business in said Borough of Jeannette."

Petitioners are "Jehovah's Witnesses". They went about from door to door in the City of Jeannette distributing literature and soliciting people to "purchase" certain religious books and pamphlets, all published by the Watch Tower Bible & Tract Society.[1] The "price" of the books was twenty-five cents each, the "price" of the pamphlets five cents each.[2] In connection with these activities petitioners used a phonograph[3] on which they played a record expounding certain of their views on religion. None of them obtained a license under the ordinance. Before they were arrested each had made "sales" of books. There was evidence that it was their practice in making these solicitations to request a "contribution" of twenty-five cents each for the books and five cents each for the pamphlets but to accept lesser sums or even to donate the volumes in case an interested person was without funds. In the present case some donations of pamphlets were made when books were purchased. Petitioners were convicted and fined for violation of the ordinance. Their judgments of conviction were sustained by the Superior Court of Pennsylvania, 149 Pa. Super. Ct. 175, 27 Atl. 2d 666, against their contention that the ordinance deprived them of the freedom of speech, press, and religion guaranteed by the First Amendment. Petitions for leave to appeal to the Supreme Court of Pennsylvania were denied. The cases are here on petitions for writs of certiorari which we granted along with the petitions for rehearing of *Jones* v. *Opelika*, 316 U. S. 584, and its companion cases.

The First Amendment, which the Fourteenth makes applicable to the states, declares that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press . . ." It could hardly be denied that a tax laid specifically on the exercise of those freedoms would be unconstitutional. Yet the license tax imposed by this ordinance is in substance just that.

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[1] Two religious books—Salvation and Creation—were sold. Others were offered in addition to the Bible. The Watch Tower Bible & Tract Society is alleged to be a non-profit charitable corporation.

[2] Petitioners paid three cents each for the pamphlets and, if they devoted only their spare time to the work, twenty cents each for the books. Those devoting full time to the work acquired the books for five cents each. There was evidence that some of the petitioners paid the difference between the sales price and the cost of the books to their local congregations which distributed the literature.

[3] Purchased along with the record from the Watch Tower Bible & Tract Society.

Petitioners spread their interpretations of the Bible and their religious beliefs largely through the hand distribution of literature by full or part time workers.[4] They claim to follow the example of Paul, teaching "publickly, and from house to house." Acts 20:20. They take literally the mandate of the Scriptures, "Go ye into all the world, and preach the gospel to every creature." Mark 16:15. In doing so they believe that they are obeying a commandment of God.

The hand distribution of religious tracts is an age-old form of missionary evangelism—as old as the history of printing presses.[5] It has been a potent force in various religious movements down through the years.[6] This form of evangelism is utilized today on a large scale by various religious sects whose colporteurs carry the Gospel to thousands upon thousands of homes and seek through personal visitations to win adherents to their faith.[7] It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of religious activity occupies the same high estate under the First Amendment as do worship

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[4] The nature and extent of their activities throughout the world during the years 1939 and 1940 are to be found in the 1941 Yearbook of Jehovah's Witnesses, pp. 62-243.

[5] Palmer, The Printing Press and the Gospel (1912).

[6] White, The Colporteur Evangelist (1930); Home Evangelization (1850); Edwards, The Romance of the Book (1932) c. V; 12 Biblical Repository (1844) Art. VIII; 16 The Sunday Magazine (1887) pp. 43-47; 3 Meliora (1861) pp. 311-319; Felice, Protestants of France (1853) pp. 53, 513; 3 D'Aubigne, History of The Reformation (1849) pp. 103, 152, 436-437; Report of Colportage in Virginia, North Carolina & South Carolina, American Tract Society (1855). An early type of colporteur was depicted by John Greenleaf Whittier in his legendary poem, The Vaudois Teacher. And see, Wylie, History of the Waldenses.

[7] The General Conference of Seventh-Day Adventists who filed a brief *amicus curiae* on the reargument of Jones *v.* Opelika has given us the following data concerning their literature ministry: This denomination has 83 publishing houses throughout the world issuing publications in over 200 languages. Some 9,256 separate publications were issued in 1941. By printed and spoken word the Gospel is carried into 412 countries in 824 languages. 1942 Year Book, p. 287. During December 1941 a total of 1018 colporteurs operated in North America. They delivered during that month $97,997.19 worth of gospel literature and for the whole year of 1941 a total of $790,610.36 —an average per person of about $65 per month. Some of these were students and temporary workers. Colporteurs of this denomination receive half of their collections from which they must pay their traveling and living expenses. Colporteurs are specially trained and their qualifications equal those of preachers. In the field each worker is under the supervision of a field missionary secretary to whom a weekly report is made. After fifteen years of continuous service each colporteur is entitled to the same pension as retired ministers. And see Howell, The Great Advent Movement (1935), pp. 72-75.

in the churches and preaching from the pulpits. It has the same claim to protection as the more orthodox and conventional exercises of religion. It also has the same claim as the others to the guarantees of freedom of speech and freedom of the press.

The integrity of this conduct or behavior as a religious practice has not been challenged. Nor do we have presented any question as to the sincerity of petitioners in their religious beliefs and practices, however misguided they may be thought to be. Moreover, we do not intimate or suggest in respecting their sincerity that any conduct can be made a religious rite and by the zeal of the practitioners swept into the First Amendment. *Reynolds* v. *United States*, 98 U. S. 145, 161-167, and *Davis* v. *Beason*, 133 U. S. 333 denied any such claim to the practice of polygamy and bigamy. Other claims may well arise which deserve the same fate. We only hold that spreading one's religious beliefs or preaching the Gospel through distribution of religious literature and through personal visitations is an age-old type of evangelism with as high a claim to constitutional protection as the more orthodox types. The manner in which it is practiced at times gives rise to special problems with which the police power of the states is competent to deal. See for example *Cox* v. *New Hampshire* 312 U. S. 569 and *Chaplinsky* v. *New Hampshire*, 315 U. S. 568. But that merely illustrates that the rights with which we are dealing are not absolutes. *Schneider* v. *State*, 308 U. S. 147, 160-161. We are concerned, however, in these cases merely with one narrow issue. There is presented for decision no question whatsoever concerning punishment for any alleged unlawful acts during the solicitation. Nor is there involved here any question as to the validity of a registration system for colporteurs and other solicitors. The cases present a single issue—the constitutionality of an ordinance which as construed and applied requires religious colporteurs to pay a license tax as a condition to the pursuit of their activities.

The alleged justification for the exaction of this license tax is the fact that the religious literature is distributed with a solicitation of funds. Thus it was stated in *Jones* v. *Opelika*, *supra*, p. 597, that when a religious sect uses "ordinary commercial methods of sales of articles to raise propaganda funds", it is proper for the state to charge "reasonable fees for the privilege of canvassing". Situations will arise where it will be difficult to determine whether a particular activity is religious or purely commercial. The distinction at times is vital. As we stated only the other day in

Jamison v. *Texas*, 318 U. S. —, "The state can prohibit the use of the street for the distribution of purely commercial leaflets, even though such leaflets may have 'a civil appeal, or a moral platitude' appended. *Valentine* v. *Chrestensen*, 316 U. S. 52, 55. They may not prohibit the distribution of handbills in the pursuit of a clearly religious activity merely because the handbills invite the purchase of books for the improved understanding of the religion or because the handbills seek in a lawful fashion to promote the raising of funds for religious purposes." But the mere fact that the religious literature is "sold" by itinerant preachers rather than "donated" does not transform evangelism into a commercial enterprise. If it did, then the passing of the collection plate in church would make the church service a commercial project. The constitutional rights of those spreading their religious beliefs through the spoken and printed word are not to be gauged by standards governing retailers or wholesalers of books. The right to use the press for expressing one's views is not to be measured by the protection afforded commercial handbills. It should be remembered that the pamphlets of Thomas Paine were not distributed free of charge. It is plain that a religious organization needs funds to remain a going concern. But an itinerant evangelist however misguided or intolerant he may be, does not become a mere book agent by selling the Bible or religious tracts to help defray his expenses or to sustain him. Freedom of speech, freedom of the press, freedom of religion are available to all, not merely to those who can pay their own way. As we have said, the problem of drawing the line between a purely commercial activity and a religious one will at times be difficult. On this record it plainly cannot be said that petitioners were engaged in a commercial rather than a religious venture. It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets. And the Pennsylvania court did not rest the judgments of conviction on that basis, though it did find that petitioners "sold" the literature. The Supreme Court of Iowa in *State* v. *Mead*, 230 Ia. 1217, described the selling activities of members of this same sect as "merely incidental and collateral" to their "main object which was to preach and publicize the doctrines of their order." And see *State* v. *Meredith*, 197 S. C. 351; *People* v. *Barber*, 289 N. Y. 378, 385-386. That accurately summarizes the present record.

We do not mean to say that religious groups and the press are free from all financial burdens of government. See *Grosjean* v. *American Press Co.*, 297 U. S. 233, 250. We have here something quite different, for example, from a tax on the income of one who engages in religious activities or a tax on property used or employed in connection with those activities. It is one thing to impose a tax on the income or property of a preacher. It is quite another thing to exact a tax from him for the privilege of delivering a sermon. The tax imposed by the City of Jeannette is a flat license tax, the payment of which is a condition of the exercise of these constitutional privileges. The power to tax the exercise of a privilege is the power to control or suppress its enjoyment. *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44-45, and cases cited. Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse. Spreading religious beliefs in this ancient and honorable manner would thus be denied the needy. Those who can deprive religious groups of their colporteurs can take from them a part of the vital power of the press which has survived from the Reformation.

It is contended, however, that the fact that the license tax can suppress or control this activity is unimportant if it does not do so. But that is to disregard the nature of this tax. It is a license tax—a flat tax imposed on the exercise of a privilege granted by the Bill of Rights. A state may not impose a charge for the enjoyment of a right granted by the federal constitution. Thus, it may not exact a license tax for the privilege of carrying on interstate commerce (*McGoldrick* v. *Berwind-White Co.*, 309 U. S. 33, 56-58), although it may tax the property used in, or the income derived from, that commerce, so long as those taxes are not discriminatory. *Id.*, p. 47 and cases cited. A license tax applied to activities guaranteed by the First Amendment would have the same destructive effect. It is true that the First Amendment, like the commerce clause, draws no distinction between license taxes, fixed sum taxes, and other kinds of taxes. But that is no reason why we should shut our eyes to the nature of the tax and its destructive influence. The power to impose a license tax on the exercise of these freedoms is indeed as potent as the power of censorship which this Court has repeatedly struck down. *Lovell* v. *Griffin*, 303 U. S.

444; *Schneider* v. *State, supra; Cantwell* v. *Connecticut*, 310 U. S. 296, 306; *Largent* v. *Texas*, 318 U. S. —; *Jamison* v. *Texas, supra.* It was for that reason that the dissenting opinions in *Jones* v. *Opelika, supra,* stressed the nature of this type of tax. 316 U. S. pp. 607-609, 620, 623. In that case, as in the present ones, we have something very different from a registration system under which those going from house to house are required to give their names, addresses and other marks of identification to the authorities. In all of these cases the issuance of the permit or license is dependent on the payment of a license tax. And the license tax is fixed in amount and unrelated to the scope of the activities of petitioners or to their realized revenues. It is not a nominal fee imposed as a regulatory measure to defray the expenses of policing the activities in question.[8] It is in no way apportioned. It is a flat license tax levied and collected as a condition to the pursuit of activities whose enjoyment is guaranteed by the First Amendment. Accordingly, it restrains in advance those constitutional liberties of press and religion and inevitably tends to suppress their exercise. That is almost uniformly recognized as the inherent vice and evil of this flat license tax. As stated by the Supreme Court of Illinois in a case involving this same sect and an ordinance similar to the present one, a person cannot be compelled "to purchase, through a license fee or a license tax, the privilege freely granted by the constitution."[9] *Blue Island* v. *Kozul*, 379 Ill. 511, 519. So it may not be said that proof is lacking that these license taxes either separately or cumulatively have restricted or are likely to restrict petitioners' religious activities. On their face they are a restriction of the free exercise of those freedoms which are protected by the First Amendment.

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[8] The constitutional difference between such a regulatory measure and a tax on the exercise of a federal right has long been recognized. While a state may not exact a license tax for the privilege of carrying on interstate commerce (McGoldrick v. Berwind-White Co., *supra*, pp. 56-58) it may, for example, exact a fee to defray the cost of purely local regulations in spite of the fact that those regulations incidentally affect commerce. "So long as they do not impede the flow of commerce and are not made the subject of regulation by Congress they are not forbidden." Clyde Mallory Lines v. Alabama, 296 U. S. 261, 267, and cases cited. And see South Carolina v. Barnwell Bros., Inc., 303 U. S. 177, 185-188.

[9] That is the view of most state courts which have passed on the question. McConkey v. Fredericksburg, 179 Va. 555; State v. Greaves, 112 Vt. 222; People v. Banks, 168 Misc. 515. *Contra:* Cook v. Harrison, 189 Ark. 546.

The taxes imposed by this ordinance can hardly help but be as severe and telling in their impact on the freedom of the press and religion as the "taxes on knowledge" at which the First Amendment was partly aimed. *Grosjean* v. *American Press Co., supra*, pp. 244-249. They may indeed operate even more subtly. Itinerant evangelists moving throughout a state or from state to state would feel immediately the cumulative effect of such ordinances as they become fashionable. The way of the religious dissenter has long been hard. But if the formula of this type of ordinance is approved, a new device for the suppression of religious minorities will have been found. This method of disseminating religious beliefs can be crushed and closed out by the sheer weight of the toll or tribute which is exacted town by town, village by village. The spread of religious ideas through personal visitations by the literature ministry of numerous religious groups would be stopped.

The fact that the ordinance is "nondiscriminatory" is immaterial. The protection afforded by the First Amendment is not so restricted. A license tax certainly does not acquire constitutional validity because it classifies the privileges protected by the First Amendment along with the wares and merchandise of hucksters and peddlers and treats them all alike. Such equality in treatment does not save the ordinance. Freedom of press, freedom of speech, freedom of religion are in a preferred position.

It is claimed, however, that the ultimate question in determining the constitutionality of this license tax is whether the state has given something for which it can ask a return. That principle has wide applicability. *State Tax Commission* v. *Aldrich*, 316 U. S. 174, and cases cited. But it is quite irrelevant here. This tax is not a charge for the enjoyment of a privilege or benefit bestowed by the state. The privilege in question exists apart from state authority. It is guaranteed the people by the federal constitution.

Considerable emphasis is placed on the kind of literature which petitioners were distributing — its provocative, abusive, and ill-mannered character and the assault which it makes on our established churches and the cherished faiths of many of us. See *Douglas* v. *City of Jeannette*, concurring opinion, decided this day. But those considerations are no justification for the license tax which the ordinance imposes. Plainly a community may not suppress, or the state tax, the dissemination of views because they are unpopular, annoying or distasteful. If that device were ever sanc-

tioned, there would have been forged a ready instrument for the suppression of the faith which any minority cherishes but which does not happen to be in favor. That would be a complete repudiation of the philosophy of the Bill of Rights.

Jehovah's Witnesses are not "above the law". But the present ordinance is not directed to the problems with which the police power of the state is free to deal. It does not cover, and petitioners are not charged with, breaches of the peace. They are pursuing their solicitations peacefully and quietly. Petitioners, moreover, are not charged with or prosecuted for the use of language which is obscene, abusive, or which incites retaliation. Cf. *Chaplinsky* v. *New Hampshire, supra.* Nor do we have here, as we did in *Cox* v. *New Hampshire, supra,* and *Chaplinsky* v. *New Hampshire, supra,* state regulation of the streets to protect and insure the safety, comfort, or convenience of the public. Furthermore, the present ordinance is not narfowly drawn to safeguard the people of the community in their homes against the evils of solicitations. See *Cantwell* v. *Connecticut, supra,* 306. As we have said, it is not merely a registration ordinance calling for an identification of the solicitors so as to give the authorities some basis for investigating strangers coming into the community. And the fee is not a nominal one, imposed as a regulatory measure and calculated to defray the expense of protecting those on the streets and at home against the abuses of solicitors. See *Cox* v. *New Hampshire, supra,* pp. 576-577. Nor can the present ordinance survive if we assume that it has been construed to apply only to solicitation from house to house.[10] The ordinance is not narrowly drawn to prevent or control abuses or evils arising from that activity. Rather, it sets aside the residential areas as a prohibited zone, entry of which is denied petitioners unless the tax is paid. That restraint and one which is city wide in scope (*Jones* v. *Opelika*) are different only in degree. Each is an abridgment of freedom of press and a restraint on the free exercise of religion. They stand or fall together.

The judgment in *Jones* v. *Opelika* has this day been vacated. Freed from that controlling precedent, we can restore to their high, constitutional position the liberties of itinerant evangelists

[10] The Pennsylvania Superior Court stated that the ordinance has been "enforced" only to prevent petitioners from canvassing "from door to door and house to house" without a license and not to prevent them from distributing their literature on the streets. 149 Pa. Super. Ct., p. 184.

who disseminate their religious beliefs and the tenets of their faith through distribution of literature. The judgments are reversed and the causes are remanded to the Pennsylvania Superior Court for proceedings not inconsistent with this opinion.

Reversed.

The dissent in *Jones* v. *City of Opelika* printed at page — covers these cases also.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

Nos. 280, 314, 966.—October Term, 1941.
Nos. 480-487.—October Term, 1942.

Roscoe Jones, Petitioner, 280, Oct. T. 1941 *vs.* City of Opelika.	On Writ of Certiorari to the Supreme Court of the State of Alabama.
Lois Bowden and Zada Sanders, Petitioners, 314, Oct. T. 1941 *vs.* City of Fort Smith, Arkansas.	On Writ of Certiorari to the Supreme Court of the State of Arkansas.
Charles Jobin, Appellant, 966, Oct. T. 1941 *vs.* The State of Arizona.	Appeal from the Supreme Court of the State of Arizona.
Robert Murdock, Jr., Petitioner, 480 *vs.* Commonwealth of Pennsylvania (City of Jeannette).	On Writs of Certiorari to the Superior Court of the Commonwealth of Pennsylvania.
Anna Perisich, Petitioner, 481 *vs.* Commonwealth of Pennsylvania (City of Jeannette).	
Willard L. Mowder, Petitioner, 482 *vs.* Commonwealth of Pennsylvania (City of Jeannette).	
Charles Seders, Petitioner, 483 *vs.* Commonwealth of Pennsylvania (City of Jeannette).	
Robert Lamborn, Petitioner, 484 *vs.* Commonwealth of Pennsylvania (City of Jeannette).	
Anthony Maltezos, Petitioner, 485 *vs.* Commonwealth of Pennsylvania (City of Jeannette).	
Anastasia Tzanes, Petitioner, 486 *vs.* Commonwealth of Pennsylvania (City of Jeannette).	
Ellaine Tzanes, Petitioner, 487 *vs.* Commonwealth of Pennsylvania (City of Jeannette).	

[May 3, 1943.]

Mr. Justice Reed, dissenting.

These cases present for solution the problem of the constitutionality of certain municipal ordinances levying a tax for the production of revenue on the sale of books and pamphlets in the

streets or from door to door. Decisions sustaining the particular ordinances were entered in the three cases first listed at the last term of this Court. In that opinion the ordinances were set out and the facts and issues stated. *Jones* v. *Opelika*, 316 U. S. 584. A rehearing has been granted. The present judgments vacate the old and invalidate the ordinances. The eight cases of this term involve canvassing from door to door only under similar ordinances, which are in the form stated in the Court's opinion. By a *per curiam* opinion of this day, the Court affirms its acceptance of the arguments presented by the dissent of last term in *Jones* v. *Opelika*. The Court states its position anew in the *Jeannette* cases.

This dissent does not deal with an objection which theoretically could be made in each case, to wit, that the licenses are so excessive in amount as to be prohibitory. This matter is not considered because that defense is not relied upon in the pleadings, the briefs or at the bar. No evidence is offered to show the amount is oppressive. An unequal tax, levied on the activities of distributors of informatory publications, would be a phase of discrimination against the freedom of speech, press or religion. Nor do we deal with discrimination against the petitioners, as individuals or as members of the group, calling themselves Jehovah's witnesses. There is no contention in any of these cases that such discrimination is practiced in the application of the ordinances. Obviously an improper application by a city, which resulted in the arrest of witnesses and failure to enforce the ordinance against other groups, such as the Adventists, would raise entirely distinct issues.

A further and important disclaimer must be made in order to focus attention sharply upon the constitutional issue. This dissent does not express, directly or by inference, any conclusion as to the constitutional rights of state or federal governments to place a privilege tax upon the soliciting of a free-will contribution for religious purposes. Petitioners suggest that their books and pamphlets are not sold but are given either without price or in appreciation of the recipient's gift for the furtherance of the work of the witnesses. The pittance sought, as well as the practice of leaving books with poor people without cost, gives strength to this argument. In our judgment, however, the plan of national distribution by the Watch Tower Bible & Tract Society, with its wholesale prices of five or twenty cents per copy for books,

delivered to the public by the witnesses at twenty-five cents per copy, justifies the characterization of the transaction as a sale by all the state courts. The evidence is conclusive that the witnesses normally approach a prospect with an offer of a book for twenty-five cents. Sometimes, apparently rarely, a book is left with a prospect without payment. The quid pro quo is demanded. If the profit was greater, twenty cents or even one dollar, no difference in principle would emerge. The witness sells books to raise money for propagandising his faith, just as other religious groups might sponsor bazaars or peddle tickets to church suppers or sell Bibles or prayer books for the same object. However high the purpose or noble the aims of the witness, the transaction has been found by the state courts to be a sale under their ordinances and, though our doubt was greater than it is, the state's conclusion would influence us to follow its determination.[1]

In the opinion in *Jones* v. *Opelika*, 316 U. S. 584, on the former hearing, attention was called to the differentiation between these cases of taxation and those of forbidden censorship, prohibition or discrimination. There is no occasion to repeat what has been written so recently as to the constitutional right to tax the money

[1] The Court in the Murdock case analyzes the contention that the sales technique partakes of commercialism and says: "It is a distortion of the facts of record to describe their activities as the occupation of selling books and pamphlets. And the Pennsylvania court did not rest the judgments of conviction on that basis, though it did find that petitioners 'sold' the literature." The state court, in its opinion, 149 Pa. Superior Ct. 175, stated the applicable ordinance as forbidding sales of merchandise by canvassing without a license, and said that the evidence established its violation by selling "two books, entitled 'Salvation' and 'Creation' respectively, and certain leaflets or pamphlets, all published by the Watch Tower Bible and Tract Society of Brooklyn, N. Y., for which the society fixed twenty-five cents each as the price for the books and five cents each as the price of the leaflets. Defendants paid twenty cents each for the books, unless they devoted their whole time to the work, in which case they paid five cents each for the books they sold at twenty-five cents. Some of the witnesses spoke of 'contributions' but the evidence justified a finding that they *sold* the books and pamphlets."

The state court then repeated with approval from one of its former decisions the statements: "The constitutional right of freedom of worship does not guarantee anybody the right to *sell* anything from house to house or in buildings, belonging to, or in the occupancy of, other persons." ". . . we do not accede to his contention on the oral argument that the federal decisions relied upon by him go so far as to rule that the constitutional guaranty of a free press forbids dealers in books and printed matter being subjected to our State mercantile license tax or the federal income tax as to such sales, along with dealers in other merchandise." Pittsburgh *v.* Ruffner, 134 Pa. Superior. Ct. 192, 199, 202. And after further discussion of selling, the conviction of the witnesses was affirmed. It can hardly be said, we think, that the state court did not treat the Jeannette canvassers as engaged in a commercial activity or occupation at the time of their arrests.

raising activities of religious or didactic groups. There are, however, other reasons not fully developed in that opinion that add to our conviction that the Constitution does not prohibit these general occupational taxes.

The real contention of the witnesses is that there can be no taxation of the occupation of selling books and pamphlets because to do so would be contrary to the due process clause of the Fourteenth Amendment, which now is held to have drawn the contents of the First Amendment into the category of individual rights protected from state deprivation. *Gitlow* v. *New York*, 268 U. S. 652, 666; *Near* v. *Minnesota*, 283 U. S. 697, 707; *Cantwell* v. *Connecticut*, 310 U. S. 296, 303. Since the publications teach a religion which conforms to our standards of legality, it is urged that these ordinances prohibit the free exercise of religion and abridge the freedom of speech and of the press.

The First Amendment reads as follows:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

It was one of twelve proposed on September 25, 1789, to the States by the First Congress after the adoption of the Constitution. Ten were ratified. They were intended to be and have become our Bill of Rights. By their terms our people have a guarantee that so long as law as we know it shall prevail, they shall live protected from the tyranny of the despot or the mob. None of the provisions of our Constitution is more venerated by the people or respected by legislatures and the courts than those which proclaim for our country the freedom of religion and expression. While the interpreters of the Constitution find the purpose was to allow the widest practical scope for the exercise of religion and the dissemination of information, no jurist has ever conceived that the prohibition of interference is absolute.[2] Is subjection to nondiscriminatory, nonexcessive taxation in the distribution of religious literature, a prohibition of the exercise of religion or an abridgment of the freedom of the press?

Nothing has been brought to our attention which would lead to the conclusion that the contemporary advocates of the adoption

[2] Whitney v. California, 274 U. S. 357, 371, and the concurring opinion, 373; Reynolds v. United States, 98 U. S. 145, 166; Cantwell v. Connecticut, 310 U. S. 296, 303; Cox v. New Hampshire, 312 U. S. 569, 574, 576.

of a Bill of Rights intended such an exemption. The words of the Amendment do not support such a construction. "Free" cannot be held to be without cost but rather its meaning must accord with the freedom guaranteed. "Free" means a privilege to print or pray without permission and without accounting to authority for one's actions. In the Constitutional Convention the proposal for a Bill of Rights of any kind received scant attention.[3] In the course of the ratification of the Constitution, however, the absence of a Bill of Rights was used vigorously by the opponents of the new government. A number of the states suggested amendments. Where these suggestions have any bearing at all upon religion or free speech, they indicate nothing as to any feeling concerning taxation either of religious bodies or their evangelism.[4] This was not because freedom of religion or free speech was not understood. It was because the subjects were looked upon from standpoints entirely distinct from taxation.[5]

[3] Journal of the Convention, 369; II Farrand, The Records of the Federal Convention, 611, 616-8, 620. Cf. McMaster & Stone, Pennsylvania and the Federal Constitution, 251-3.

[4] I Elliot's Debates on the Federal Constitution (1876) 319 *et seq.* In ratifying the Constitution the following declarations were made: *New Hampshire*, p. 326, "XI. Congress shall make no laws touching religion, or to infringe the rights of conscience." *Virginia*, p. 327, " . . . no right, of any denomination, can be cancelled, abridged, restrained, or modified, by the Congress, by the Senate or House of Representatives, acting in any capacity, by the President, or any department or officer of the United States, except in those instances in which power is given by the Constitution for those purposes; and that among other essential rights, the liberty of conscience, and of the press, cannot be cancelled, abridged, restrained, or modified, by any authority of the United States." *New York*, p. 328, "That the freedom of the press ought not to be violated or restrained." After the submission of the amendments, *Rhode Island* ratified and declared, pp. 334, 335, "IV. That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, and not by force and violence; and therefore all men have a natural, equal, and unalienable right to the exercise of religion according to the dictates of conscience; and that no particular religious sect or society ought to be favored or established, by law, in preference to others. . . . XVI. That the people have a right to freedom of speech, and of writing and publishing their sentiments. That freedom of the press is one of the greatest bulwarks of liberty, and ought not to be violated."

[5] The Articles of Confederation had references to religion and free speech: "Article III. The said States hereby severally enter into a firm league of friendship with each other, for their common defence, the security of their liberties, and their mutual and general welfare, binding themselves to assist each other, against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever."

"Article V. . . . . Freedom of speech and debate in Congress shall not be impeached or questioned in any court, or place out of Congress, and the members of Congress shall be protected in their persons from arrests and

The available evidence of Congressional action shows clearly that the draftsmen of the amendments had in mind the practice of religion and the right to be heard, rather than any abridgment or interference with either by taxation in any form.[6] The amendments were proposed by Mr. Madison. He was careful to explain to the Congress the meaning of the amendment on religion. The draft was commented upon by Mr. Madison when it read:

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imprisonments, during the time of their going to and from, and attendance on Congress, except for treason, felony, or breach of the peace."

The Statute of Religious Freedom was passed in Virginia in 1785. The substance was in paragraph II: "*Be it enacted by the General Assembly,* That no man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess, and by argument to maintain, their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities." 12 Hening Statutes of Va. 86.

A number of the states' constitutions at the time of the adoption of the Bill of Rights contained provisions as to a free press:

Georgia, Constitution of 1777, Art. LXI. "Freedom of the press and trial by jury to remain inviolate forever." I Poore, Federal and State Constitutions 383.

Maryland, Constitution of 1776, Declaration of Rights, Art. XXXVIII. "That the liberty of the press ought to be inviolably preserved." *Id.*, 820.

Massachusetts, Constitution of 1780, Part First, Art. XVI. "The liberty of the press is essential to the security of freedom in a State; it ought not, therefore, to be restrained in this commonwealth." *Id.*, 959.

New Hampshire, Constitution of 1784, Part 1, Art. XXII. "The Liberty of the Press is essential to the security of freedom in a state; it ought, therefore, to be inviolably preserved." 2 Poore, *id.*, 1282.

North Carolina, Constitution of 1776, Declaration of Rights, Art. XV. "That the freedom of the press is one of the great bulwarks of liberty, and therefore ought never to be restrained." *Id.*, 1410.

Pennsylvania, Constitution of 1776, Declaration of Rights, Art. XII. "That the people have a right to freedom of speech, and of writing, and publishing their sentiments; therefore the freedom of the press ought not to be restrained." *Id.*, 1542.

Virginia, Bill of Rights, 1776, Sec. 12. "That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments." *Id.*, 1909.

[6] For example, the first amendment as it passed the House of Representatives on Monday, August 24, 1789, read as follows:

"Congress shall make no law establishing religion or prohibiting the free exercise thereof, nor shall the rights of Conscience be infringed.

"The Freedom of, Speech, and of the Press, and the right of the People peaceably to assemble, and consult for their common good, and to apply to the Government for a redress of grievances, shall not be infringed." Records of the United States Senate, 1A-C2 (U. S. Nat. Archives).

Apparently when the proposed amendments were passed by the Senate on September 9, 1789, what is now the first amendment read as follows:

"Congress shall make no law establishing articles of faith, or a mode of worship, or prohibiting the free exercise of religion; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition to the government for a redress of grievances." *Id.*

"no religion shall be established by law, nor shall the equal rights of conscience be infringed." 1 Annals of Congress 729.

He said that he apprehended the meaning of the words on religion to be that Congress should not establish a religion and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. *Id.*, 730. No such specific interpretation of the amendment on freedom of expression has been found in the debates. The clearest is probably from Mr. Benson[7] who said that

"The committee who framed this report proceeded on the principle that these rights belonged to the people; they conceived them to be inherent; and all that they meant to provide against was their being infringed by the Government." *Id.*, 731-32.

There have been suggestions that the English taxes on newspapers, springing from the tax act of 10 Anne, c. 19, Sec. CI,[8] influenced the adoption of the First Amendment.[9] These taxes were obnoxious but an examination of the sources of the suggestion is convincing that there is nothing to support it except the fact that the tax on newspapers was in existence in England and

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[7] Egbert Benson was the first attorney general of New York, a member of the Continental Congress and of the New York Convention for ratification of the Constitution. Biographical Directory of the American Congress, 694.

[8] "And be it enacted by the Authority aforesaid, That there shall be raised, levied, collected and paid, to and for the Use of her Majesty, her Heirs and Successors, for and upon all Books and Papers commonly called Pamphlets, and for and upon all News Papers, or Papers containing publick News, Intelligence or Occurences, which shall, at any Time or Times within or during the Term last mentioned, be printed in *Great Britain*, to be dispersed and made publick, and for and upon such Advertisements as are herein after mentioned, the respective Duties following; that is to say,

"For every such Pamphlet or Paper contained in Half a Sheet, or any lesser Piece of Paper, so printed, the Sum of one Half-penny Sterling.

"For every such Pamphlet or Paper (being larger than Half a Sheet, and not exceeding one whole Sheet) so printed, a Duty after the Rate of one Penny Sterling for every printed Copy thereof.

"And for every such Pamphlet or Paper, being larger than one whole Sheet, and not exceeding six Sheets in Octavo, or in a lesser Page, or not exceeding twelve Sheets in Quarto, or twenty Sheets in Folio, so printed, a Duty after the Rate of two Shillings Sterling for every Sheet of any kind of Paper which shall be contained in one printed Copy thereof.

"And for every Advertisement to be contained in the *London Gazette*, or any other printed Paper, such Paper being dispersed or made publick weekly, or oftner, the Sum of twelve Pence Sterling."

[9] Stevens, Sources of the Constitution, 221, note 2; Stewart, Lennox and the Taxes on Knowledge, 15 Scottish Hist. Rev. 322, 326; McMaster & Stone, Pennsylvania and the Federal Constitution, 181; Grosjean *v.* American Press Co., 297 U. S. 233, 248.

was disliked.[10] The simple answer is that if there had been any purpose of Congress to prohibit any kind of taxes on the press its knowledge of the abominated English taxes would have led it to ban them unequivocally.

It is only in recent years that the freedoms of the First Amendment have been recognized as among the fundamental personal rights protected by the Fourteenth Amendment from impairment by the states.[11] Until then these liberties were not deemed to be guarded from state action by the Federal Constitution.[12] The states placed restraints upon themselves in their own constitutions in order to protect their people in the exercise of the freedoms of speech and of religion.[13] Pennsylvania may be taken as a fair example. Its constitution reads:

"All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship." Purdon's Penna. Stat., Const., Art. I, Sec. 3.

"No person who acknowledges the being of a God, and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth." *Id.*, Art. I, Sec. 4.

"The printing press shall be free to every person who may undertake to examine the proceedings of the Legislature or any branch of government, and no law shall ever be made to restrain the right thereof. The free communication of thoughts and opinions is one of the invaluable rights of man, and every citizen may freely speak, write and print on any subject, being responsible for the abuse of that liberty. . . . ." *Id.*, Art. I, Sec. 7.

It will be observed that there is no suggestion of freedom from taxation, and this statement is equally true of the other state constitutional provisions. It may be concluded that neither in the

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[10] Cf. Collet, Taxes on Knowledge; Chafee, Free Speech in the United States, 17, n. 33.

[11] Gitlow v. New York (1925), 268 U. S. 652, 666; Near v. Minnesota, 283 U. S. 697, 707; Cantwell v. Connecticut, 310 U. S. 296, 307.

[12] Permoli v. First Municipality, 3 How. 589, 609; Barron v. Baltimore, 7 Pet. 243, 247.

[13] For the state provisions on expression and religion, see 2 Cooley, Constitutional Limitations (8th Ed.) 876, 965; III Constitutions of the States, New York State Con. Con. Committee 1938.

state or the federal constitutions was general taxation of church or press interdicted.

Is there anything in the decisions of this Court which indicates that church or press is free from the financial burdens of government? We find nothing. Religious societies depend for their exemptions from taxation upon state constitutions or general statutes, not upon the Federal Constitution. *Gibbons* v. *District of Columbia*, 116 U. S. 404. This Court has held that the chief purpose of the free press guarantee was to prevent previous restraints upon publication. *Near* v. *Minnesota*, 283 U. S. 697, 713.[14] In *Grosjean* v. *American Press Co.*, 297 U. S. 233, 250, it was said that the predominant purpose was to preserve "an untrammeled press as a vital source of public information." In that case, a gross receipt tax on advertisements in papers with a circulation of more than twenty thousand copies per week was held invalid because "a deliberate and calculated device in the guise of a tax to limit the circulation. . . ." There was this further comment:

"It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government. But this is not an ordinary form of tax, but one single in kind, with a long history of hostile misuse against the freedom of the press." *Id.*, 250.

It may be said, however, that ours is a too narrow, technical and legalistic approach to the problem of state taxation of the activities of church and press; that we should look not to the expressed or historical meaning of the First Amendment but to the broad principles of free speech and free exercise of religion which pervade our national way of life. It may be that the Fourteenth Amendment guarantees these principles rather than the more definite concept expressed in the First Amendment. This would mean that as a Court, we should determine what sort of liberty it is that the due process clause of the Fourteenth Amendment guarantees against state restrictions on speech and church.

But whether we give content to the literal words of the First Amendment or to principles of the liberty of the press and the church, we conclude that cities or states may levy reasonable, non-discriminatory taxes on such activities as occurred in these

[14] To this Professor Chafee adds the right to criticize the Government. Free Speech in the United States (1941) 18 *et seq.* Cf. 2 Cooley's Constitutional Limitations (8th Ed.) 886.

cases. Whatever exemptions exist from taxation arise from the prevailing law of the various states. The constitutions of Alabama and Pennsylvania; with substantial similarity to the exemption provisions of other constitutions, forbid the taxation of lots and buildings used exclusively for religious worship. Alabama (1901), sec. 91; Pennsylvania (1874), Art. IX, sec. 1. These are the only exemptions of the press or church from taxation. We find nothing more applicable to our problem in the other constitutions. Surely this unanimity of specific state action on exemptions of religious bodies from taxes would not have occurred throughout our history, if it had been conceived that the genius of our institutions, as expressed in the First Amendment, was incompatible with the taxation of church or press.

Nor do we understand that the Court now maintains that the Federal Constitution frees press or religion of any tax except such occupational taxes as those here levied. Income taxes, ad valorem taxes, even occupational taxes are presumably valid, save only a license tax on sales of religious books. Can it be that the Constitution permits a tax on the printing presses and the gross income of a metropolitan newspaper[15] but denies the right to lay an occupational tax on the distributors of the same papers? Does the exemption apply to booksellers or distributors of magazines or only to religious publications? And, if the latter to what distributors? Or to what books? Or is this Court saying that a religious practice of book distribution is free from taxation because a state cannot prohibit the "free exercise thereof" and a newspaper is subject to the same tax even though the same Constitutional Amendment says the state cannot abridge the freedom of the press? It has never been thought before that freedom from taxation was a perquisite attaching to the privileges of the First Amendment. The national Government grants exemptions to ministers and churches because it wishes to do so, not because the Constitution compels. Internal Revenue Code, §§ 22(b)(6), 101(6), 812(d), 1004(a)(2)(B). Where camp meetings or revivals charge admissions, a federal tax would apply, if Congress had not granted freedom from the exaction. *Id.*, § 1701.

It is urged that such a tax as this may be used readily to restrict the dissemination of ideas. This must be conceded but the possibility of misuse does not make a tax unconstitutional.

[15] Giragi v. Moore, 301 U. S. 670; 48 Ariz. 33; 49 Ariz. 74.

No abuse is claimed here. The ordinances in some of these cases are the general occupation license type covering many businesses. In the *Jeannette* prosecutions, the ordinance involved lays the usual tax on canvassing or soliciting sales of goods, wares and merchandise. It was passed in 1898. Every power of taxation or regulation is capable of abuse. Each one to some extent prohibits the free exercise of religion and abridges the freedom of the press but that is hardly a reason for denying the power. If the tax is used oppressively, the law will protect the victims of such action.

This decision forces a tax subsidy notwithstanding our accepted belief in the separation of church and state. Instead of all bearing equally the burdens of government, this Court now fastens upon the communities the entire cost of policing the sales of religious literature. That the burden may be heavy is shown by the record in the *Jeannette* cases. There are only eight prosecutions but one hundred and four witnesses solicited in Jeannette the day of the arrests. They had been requested by the authorities to await the outcome of a test case before continuing their canvassing. The distributors of religious literature, possibly of all informatory publications, become today privileged to carry on their occupations without contributing their share to the support of the government which provides the opportunity for the exercise of their liberties.

Nor do we think it can be said, properly, that these sales of religious books are religious exercises. The opinion of the Court in the *Jeannette* cases emphasizes for the first time the argument that the sale of books and pamphlets is in itself a religious practice. The Court says the witnesses "spread their ~~versions~~ of the ~~Gospel~~ largely through the distribution of ~~religious~~ literature by full or part time workers. The hand distribution of religious tracts is an age-old form of missionary evangelism—as old as the history of printing presses." It is more than preaching; it is more than distribution of religious literature. It is a combination of both. Its purpose is as evangelical as the revival meeting. This form of ~~evangelism~~ occupies the same high estate under the First Amendment as do worship in the churches and preaching from the pulpits." "Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance." "The judgment in *Jones* v. *Opelika* has this day been vacated. Freed

from that controlling precedent, we can restore to their high, constitutional position the liberties of itinerant evangelists who disseminate religious beliefs and the tenets of their faith through distribution of ~~the printed word~~ their literature." The record shows that books entitled "Creation" and "Salvation", as well as Bibles, were offered for sale. We shall assume the first two publications, also, are religious books. Certainly there can be no dissent from the ~~statement that selling religious books~~ is an age-old practice or that it is evangelism in the sense that the distributors hope the readers will be spiritually benefited. That does not carry us to the conviction, however, that when distribution of religious books is made at a price, the itinerant colporteur is performing a religious rite, is worshipping his Creator in his way. Many sects practice healing the sick as an evidence of their religious faith or maintain orphanages or homes for the aged or teach the young. These are, of course, in a sense, religious practices but hardly such examples of religious rites as are encompassed by the prohibition against the free exercise of religion.

And even if the distribution of religious books was a religious practice protected from regulation by the First Amendment, certainly the affixation of a price for the articles would destroy the sacred character of the transaction. The evangelist becomes also a book agent.

The rites which are protected by the First Amendment are in essence spiritual—prayer, mass, sermons, sacrament—not sales of religious goods. The card furnished each witness to identify him as an ordained minister does not go so far as to say the sale is a rite. It states only that the witnesses worship by exhibiting to people "the message of said gospel in printed form, such as the Bible, books, booklets and magazines, and thus afford the people the opportunity of learning of God's gracious provision for them." On the back of the card appears: "You may contribute twenty-five cents to the Lord's work and receive a copy of this beautiful book." The sale of these religious books has, we think, relation to their religious exercises, similar to the "information march,"

said by the witnesses to be one of their "ways of worship" and by this Court to be subject to regulation by license in *Cox* v. *New Hampshire*, 312 U. S. 569, 572, 573, 576.

The attempted analogy in the dissenting opinion in *Jones* v. *Opelika*, 316 U. S. 584, 609, 611, which now becomes the decision of this Court, between the forbidden burden of a state tax for the privilege of engaging in interstate commerce and a state tax on the privilege of engaging in the distribution of religious literature is wholly irrelevant. A state tax on the privilege of engaging in interstate commerce is held invalid because the regulation of commerce between the states has been delegated to the Federal Government. This grant includes the necessary means to carry the grant into effect and forbids state burdens without Congressional consent.[16] It is not the power to tax interstate commerce which is interdicted but the exercise of that power by an unauthorized sovereign, the individual state. Although the fostering of commerce was one of the chief purposes for organizing the present Government, that commerce may be burdened with a tax by the United States. Internal Revenue Code, § 3469. Commerce must pay its way. It is not exempt from any type of taxation if imposed by an authorized authority. The Court now holds that the First Amendment wholly exempts the church and press from a privilege tax, presumably by the national as well as the state governments.

The limitations of the Constitution are not maxims of social wisdom but definite controls on the legislative process. We are dealing with power, not its abuse. This late withdrawal of the power of taxation over the distribution activities of those covered by the First Amendment fixes what seems to us an unfortunate principle of tax exemption, capable of indefinite extension. We had thought that such an exemption required a clear and certain grant. This we do not find in the language of the First and Fourteenth Amendment. We are therefore of the opinion the judgments below should be affirmed.

Mr. Justice ROBERTS, Mr. Justice FRANKFURTER, and Mr. Justice JACKSON join in this dissent. Mr. Justice JACKSON has stated additional reasons for dissent in his concurrence in *Douglas* v. *Jeannette*, decided this day.

[16] Brown v. Maryland, 12 Wheat. 419, 445, 448; Kentucky Whip & Collar Co. v. I. C. R. Co., 299 U. S. 334, 350; Gwin, etc., Inc. v. Henneford, 305 U. S. 434, 438; Puget Sound Co. v. Tax Commission, 302 U. S. 90.

Mr. Justice FRANKFURTER, dissenting.

While I wholly agree with the views expressed by Mr. Justice REED, the controversy is of such a nature as to lead me to add a few words.

A tax can be a means for raising revenue, or a device for regulating conduct, or both. Challenge to the constitutional validity of a tax measure requires that it be analyzed and judged in all its aspects. We must therefore distinguish between the questions that are before us in these cases and those that are not. It is altogether incorrect to say that the question here is whether a state can limit the free exercise of religion by imposing burdensome taxes. As the opinion of my Brother REED demonstrates, we have not here the question whether the taxes imposed in these cases are in practical operation an unjustifiable curtailment upon the petitioners' undoubted right to communicate their views to others. No claim is made that the effect of these taxes, either separately or cumulatively, has been or is likely to be to restrict the petitioners' religious propaganda activities in any degree. Counsel expressly disclaim any such contention. They insist on absolute immunity from any kind of monetary exaction for their occupation. Their claim is that no tax, no matter how trifling, can constitutionally be laid upon the activity of distributing religious literature, regardless of the actual effect of the tax upon such activity. That is the only ground upon which these ordinances have been attacked, that is the only question raised in or decided by the state courts, and that is the only question presented to us. No complaint is made against the size of the taxes. If an appropriate claim, indicating that the taxes were oppressive in their effect upon the petitioners' activities, had been made, the issues here would be very different. No such claim has been made, and it would be gratuitous to consider its merits.

Nor have we occasion to consider whether these measures are invalid on the ground that they unjustly or unreasonably discriminate against the petitioners. Counsel do not claim, as indeed they could not, that these ordinances were intended to or have been applied to discriminate against religious groups generally or Jehovah's Witnesses particularly. No claim is made that the effect of the taxes is to hinder or restrict the activities of Jehovah's Witnesses while other religious groups, perhaps older

or more prosperous, can carry on theirs. This question, too, is not before us.

It cannot be said that the petitioners are constitutionally exempt from taxation merely because they may be engaged in religious activities or because such activities may constitute an exercise of a constitutional right. It will hardly be contended, for example, that a tax upon the income of a clergyman would violate the Bill of Rights, even though the tax is ultimately borne by the members of his church. A clergyman, no less than a judge, is a citizen. And not only in time of war would neither willingly enjoy immunity from the obligations of citizenship. It is only fair that he also who preaches the word of God should share in the costs of the benefits provided by government to him as well as to the other members of the community. And so no one would suggest that a clergyman who uses an automobile or the telephone in connection with his work thereby gains a constitutional exemption from taxes levied upon the use of automobiles or upon telephone calls. Equally alien is it to our constitutional system to suggest that the Constitution of the United States exempts church-held lands from state taxation. Plainly, a tax measure is not invalid under the federal Constitution merely because it falls upon persons engaged in activities of a religious nature.

Nor can a tax be invalidated merely because it falls upon activities which constitute an exercise of a constitutional right. The First Amendment of course protects the right to publish a newspaper or a magazine or a book. But the crucial question is—how much protection does the Amendment give, and against what is the right protected? It is certainly true that the protection afforded the freedom of the press by the First Amendment does not include exemption from all taxation. A tax upon newspaper publishing is not invalid simply because it falls upon the exercise of a constitutional right. Such a tax might be invalid if it invidiously singled out newspaper publishing for bearing the burdens of taxation or imposed upon them in such ways as to encroach on the essential scope of a free press. If the Court could justifiably hold that the tax measures in these cases were vulnerable on that ground, I would unreservedly agree. But the Court has not done so, and indeed could not.

The vice of the ordinances before us, the Court holds, is that they impose a special kind of tax, a "flat license tax, the payment

of which is a condition of the exercise of these constitutional privileges [to engage in religious activities]." But the fact that an occupation tax is a "flat" tax certainly is not enough to condemn it. A legislature undoubtedly can tax all those who engage in an activity upon an equal basis. The Constitution certainly does not require that differentiations must be made among taxpayers upon the basis of the size of their incomes or the scope of their activities. Occupation taxes normally are flat taxes, and the Court surely does not mean to hold that a tax is bad merely because all taxpayers pursuing the very same activities and thereby demanding the same governmental services are treated alike. Nor, as I have indicated, can a tax be invalidiated because the exercise of a constitutional privilege is conditioned upon its payment. It depends upon the nature of the condition that is imposed, its justification, and the extent to which it hinders or restricts the exercise of the privilege.

As I read the Court's opinion, it does not hold that the taxes in the cases before us in fact do hinder or restrict the petitioners in exercising their constitutional rights. It holds that "The power to tax the exercise of a privilege is the power to control or suppress its enjoyment". This assumes that because the taxing power exerted in *Magnano Co.* v. *Hamilton*, 292 U. S. 40, the well-known oleomargarine tax case, may have had the effect of "controlling" or "suppressing" the enjoyment of a privilege and still was sustained by this Court, and because all exertions of the taxing power may have that effect, if perchance a particular exercise of the taxing power does have that effect, it would have to be sustained under our ruling in the *Magnano* case.

The power to tax, like all powers of government, legislative, executive and judicial alike, can be abused or perverted. The power to tax is the power to destroy only in the sense that those who have power can misuse it. Mr. Justice Holmes disposed of this smooth phrase as a constitutional basis for invalidating taxes when he wrote "The power to tax is not the power to destroy while this Courts sits." *Panhandle Oil Co.* v. *Knox*, 277 U. S. 218, 223. The fact that a power can be perverted does not mean that every exercise of the power is a perversion of the power. Thus, if a tax indirectly suppresses or controls the enjoyment of a constitutional privilege which a legislature cannot directly suppress or control, of course it is bad. But it is irrelevant that a tax can suppress or control if it does not. The Court holds that "Those who can tax

the exercise of this religious practice can make its exercise so costly as to deprive it of resources necessary for its maintenance". But this is not the same as saying that "Those who do tax the exercise of this religious practice have made its exercise so costly as to deprive it of the resources necessary for its maintenance."

The Court could not plausibly make such an assertion because the petitioners themselves disavow any claim that the taxes imposed in these cases impair their ability to exercise their constitutional rights. We cannot invalidate the tax measures before us simply because there may be others, not now before us, which are oppressive in their effect. The Court's opinion does not deny that the ordinances involved in these cases have in no way disabled the petitioners to engage in their religious activities. It holds only that "Those who can tax the privilege of engaging in this form of missionary evangelism can close its doors to all those who do not have a full purse." I quite agree with this statement as an abstract proposition. Those who possess the power to tax might wield it in tyrannical fashion. It does not follow, however, that every exercise of the power is an act of tyranny, or that government should be impotent because it might become tyrannical. The question before us now is whether these ordinances have deprived the petitioners of their constitutional rights, not whether some other ordinances not now before us might be enacted which might deprive them of such rights. To deny constitutional power to secular authority merely because of the possibility of its abuse is as valid as to deny the basis of spiritual authority because those in whom it is temporarily vested may misuse it.

The petitioners say they are immune as much from a flat occupation tax as from a licensing fee purporting explicitly to cover only the costs of regulation. They rightly reject any distinction between this occupation tax and such a licensing fee. There is no constitutional difference between a so-called regulatory fee and an imposition for purposes of revenue. The state exacts revenue to maintain the costs of government as an entirety. For certain purposes and at certain times a legislature may earmark exactions to cover the costs of specific governmental services. In most instances the revenues of the state are tapped from multitudinous sources for a common fund out of which the costs of government are paid. As a matter of public finance, it is often impossible to determine with nicety the governmental expenditures attributable to particular activities. But, in any event,

whether government collects revenue for the costs of its services through an earmarked fund, or whether an approximation of the cost of regulation goes into the general revenues of government out of which all expenses are borne, is a matter of legislative discretion and not of constitutional distinction. Just so long as an occupation tax is not used as a cover for discrimination against a constitutionally protected right or as an unjustifiable burden upon it, from the point of view of the Constitution of the United States it can make no difference whether such a money exaction for governmental benefits is labeled a regulatory fee or a revenue measure.

It is strenuously urged that the Constitution denies a city the right to control the expression of men's minds and the right of men to win others to their views. But the Court is not divided on this proposition. No one disputes it. All members of the Court are equally familiar with the history that led to the adoption of the Bill of Rights and are equally zealous to enforce the constitutional protection of the free play of the human spirit. Escape from the real issue before us cannot be found in such generalities. The real issue here is not whether a city may charge for the dissemination of ideas but whether the states have power to require those who need additional facilities to help bear the cost of furnishing such facilities. Street hawkers make demands upon municipalities that involve the expenditure of dollars and cents, whether they hawk printed matter or other things. As the facts in these cases show, the cost of maintaining the peace, the additional demands upon governmental facilities for assuring security, involve outlays which have to be met. To say that the Constitution forbids the states to obtain the necessary revenue from the whole of a class that enjoys these benefits and facilities, when in fact no discrimination is suggested as between purveyors of printed matter and purveyors of other things, and the exaction is not claimed to be actually burdensome, is to say that the Constitution requires not that the dissemination of ideas in the interest of religion shall be free but that it shall be subsidized by the state. Such a claim offends the most important of all aspects of religious freedom in this country, namely, that of the separation of church and state.

The ultimate question in determining the constitutionality of a tax measure is—has the state given something for which it can ask a return? There can be no doubt that these petitioners, like all who use the streets, have received the benefits of government. Peace is maintained, traffic is regulated, health is safeguarded—

these are only some of the many incidents of municipal administration. To secure them costs money, and a state's source of money is its taxing power. There is nothing in the Constitution which exempts persons engaged in religious activities from sharing equally in the costs of benefits to all, including themselves, provided by government.

I cannot say, therefore, that in these cases the community has demanded a return for that which it did not give. Nor am I called upon to say that the state has demanded unjustifiably more than the value of what it gave, nor that its demand in fact cramps activities pursued to promote religious beliefs. No such claim was made at the bar, and there is no evidence in the records to substantiate any such claim if it had been made. Under these circumstances, therefore, I am of opinion that the ordinances in these cases must stand.

Mr. Justice JACKSON joins in this dissent.